No. 649

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

BEN F. RAY, as Chairman of the State Democratic Executive Committee of Alabama, *Petitioner*,

v.

EDMUND BLAIR, *Respondent*.

PETITIONER'S BRIEF ON THE MERITS.

On Writ of Certiorari to the Supreme Court of Alabama.

JAMES J. MAYFIELD,
HAROLD M. COOK,
GEORGE A. LEMAISTRE,
J. GORDON MADISON,
MARX LEVA,
LOUIS F. OBERDORFER,
TRUMAN M. HOBBS,
Attorneys for Petitioner.

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INDEX

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OPINIONS BELOW.

The opinion of the Circuit Court of Jefferson County, Alabama (R. 142) is unreported. The opinion of the Supreme Court of Alabama (R. 159) is not yet reported.

JURISDICTION.

The judgment of the Supreme Court of Alabama was entered on February 29, 1951. (R. 175) A stay of the orders of the Courts below, and a petition for a writ of certiorari, were granted by this Court on March 24, 1952. (R. 177) The jurisdiction of this Court rests on 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED.

1. Do Article II, Section 1, and the Twelfth Amendment of the United States Constitution prohibit a state, by legislative or administrative action, or by a combination of legislative and administrative action, from requiring presidential electors to cast their electoral votes for President and Vice-President of the United States for the candidates of the political party under the auspices of which the electors were elected?

2. Do Article II, Section 1, and the Twelfth Amendment of the United States Constitution prohibit a political party from requiring its candidates for presidential elector, as a condition for seeking primary nomination as such candidates, to pledge that if elected they will vote for the presidential and vice-presidential nominees of the party?

Conversely, do those provisions of the Federal Constitution require that a political party permit a person to become a candidate for the party's nomination for presidential and vice-presidential elector, even though that person states that if elected he will *not* cast his electoral ballot for the party's nominees for President and Vice-President?

3. Do Article II, Section 1, and the Twelfth Amendment of the United States Constitution create constitutionally protected and legally enforceable rights in favor of a person seeking primary nomination as candidate for presidential elector?

4. Has the Supreme Court of Alabama correctly interpreted and applied Article II, Section 1, and the Twelfth Amendment of the United States Constitution?

PROVISIONS OF THE UNITED STATES CONSTITUTION INVOLVED.

1. The relevant provisions of Article II, Section 1, of the United States Constitution are as follows:

> "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors,

equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector."

2. The relevant provisions of the Twelfth Amendment of the Constitution are as follows:

"The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President if such number be a ma-

jority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States."

ALABAMA STATUTES AND ADMINISTRATIVE REGULATIONS INVOLVED.

The general framework of Alabama election law can be summarized as follows:

Alabama's Democratic electors are nominated by primary election. This is not compulsory, but a matter for determination by the governing body of the party. Title 17, Section 336, Code of Alabama 1940. That body may set political and other qualifications for primary participation as voter or candidate. Title 17, Section 347, Code of Alabama. A candidate in a primary election must be eligible to vote and politically qualified in order to secure a place on the ballot. Title 17, Section 345, Code of Alabama. The Committee Chairman must certify the names of candidates to the Secretary of State forty days prior to the primary election. Title 17, Section 344, Code of Alabama. But he is to receive and certify only declarations of candidacy "in the form prescribed by the governing body of the party." Title 17, Section 348, Code of Alabama.

The relevant Alabama statutes, and the administrative regulations adopted pursuant to such statutes, are printed in Appendix "A" and Appendix "B," *infra*.

STATEMENT.

One of the basic Alabama statutes governing primary elections provides that "every state executive committee of a party . . . shall, in its own way, declare and determine

who shall be entitled and qualified to vote in such primary election, or to be candidates therein . . ." (Alabama Code, Title 17, Section 347). Pursuant to this statute and the other provisions of Alabama election law, the Alabama Democratic Executive Committee[1] resolved, among other things, that each candidate for Democratic nomination must pledge himself to "aid and support . . . the nominees of the National Convention of the Democratic Party for President and Vice-President . . ." (R. 10)[2]

Respondent Blair applied to the Petitioner, as Chairman of the Alabama Democratic Committee, for certification as a candidate for nomination as Presidential elector on the Democratic ticket. Blair failed and refused, however, to pledge his aid and support to the nominees of the Democratic National Convention, as required by the Committee pursuant to state law. Blair instead substituted in his declaration of candidacy a statement that he would "not cast an electoral vote for Harry S. Truman or for any one who advocates the Truman-Humphrey Civil Rights Program." (R. 4)

Petitioner did not certify the Respondent's name to the Secretary of State, and Respondent thereupon petitioned for a write of mandamus in the Circuit Court of Jefferson County. (R. 3) That court, after hearing, ordered the Petitioner to certify Respondent's name to the Secretary of State as a candidate for Presidential elector on the Democratic ticket. (R. 51) The Supreme Court of Alabama affirmed the judgment and order of the Circuit Court, on the theory that the Twelfth Amendment of the Federal Constitution "confers on electors freedom to exercise their judgment in respect to voting in the electoral college for a President and Vice President." (R. 162)

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[1] Hereafter referred to as the "Committee".

[2] The resolution adopted by the Committee on January 26, 1952 is set out in Appendix "B" hereto.

SUMMARY OF ARGUMENT.

1. The decision below conflicts with, and jeopardizes, the historical policy of the Constitution and the operation of the electoral processes of this country, whereby there is committed to the State legislatures the procedure for the selection of presidential electors.

2. The Constitution expressly provides that: "Each State shall appoint, *in such Manner as the Legislature thereof may direct*, a number of Electors . . ." Article II, Section 1. (Emphasis added.)

3. Pursuant to this provision of the Constitution, at least twenty-one states have adopted statutes which wholly omit from the ballot the names of candidates for elector. In addition, statutes in California and Oregon require electors to vote for their party's nominees for President and Vice President. See pp. 15-16, *infra*. These statutes are collected in Appendix "C" hereto.

4. This Court has expressly held, in *McPherson* v. *Blacker*, 146 U. S. 1 (1892), that the state legislatures have, under Article II, Section 1, "plenary power . . . in the matter of the appointment of electors."

5. Accordingly, there is no Constitutional basis for the decision below, since the Constitution does not prohibit the action which Alabama has taken.

6. This Court, in *In re Green*, 134 U. S. 377 (1890), has recognized the true role of a Presidential elector and has said:

> "The sole function of the presidential electors is to cast, certify and transmit the vote of the State for President and Vice President of the nation."

7. If the decision below is allowed to stand, the practical effect will be the disfranchisement of the average voter. Such a voter, under the decision below, can no longer have any assurance that his vote will be of benefit to the Presidential nominee of his choice.

8. Even if it were true that the Constitution itself guarantees to a duly elected elector freedom to vote for the President of his choice, it does not follow that the same freedom would extend to one who seeks to be a candidate in the primary of a given political party.

ARGUMENT.

The Alabama Supreme Court has struck down, on grounds of unconstitutionality, a state procedure for nominating presidential and vice presidential electors under which the candidates are required, as a condition of candidacy for nomination in the Democratic primary, to pledge to support the nominees of the National Convention of the Democratic party. The Court below held that the procedure violates Article II, Section 1 and the Twelfth Amendment of the Constitution.

The court below has erroneously interpreted and applied Article II, Section 1, and the Twelfth Amendment. The decision below conflicts with opinions of this Court and of other courts, with legislative enactments, and with long standing custom and tradition in this country. In terms of consequences, the Alabama holding effectively deprives the voters of Alabama of the opportunity to choose a President and Vice President of the United States. Electorates in all other states are also directly affected. The efficacy of the two-party system is dangerously imperiled.

The Supreme Court of Alabama has declared that the Constitution of the United States guarantees absolute discretion to Presidential electors to cast their electoral vote for anyone they please. And the Supreme Court of Alabama has held that by Constitutional command this discretion may not be restricted by a political party, operating pursuant to state law, even to the extent of exacting a pledge from persons seeking to become candidates for elector in the party's primary that if elected they will support the nominees for President and Vice-President selected by the National Convention of the party.

The Supreme Court of Alabama has decided this question in a way that runs counter to more than one hundred

and fifty years of custom and tradition in the nomination and election of Presidential electors.

For more than a century and a half the voters of this country have registered, in effect, a direct choice for President and Vice-President of the United States. Electors have consistently and uniformly done no more than reflect the wishes of the parties under whose auspices they have run for office. This tradition is so well established that in twenty-one of the states electors' names do not appear on the ballot; the voter marks his ballot for the actual Presidential and Vice-Presidential nominees. (For a collection of the statutes of such states, see Appendix "C".)

The decision of the Supreme Court of Alabama takes from the voters this awesome power of electing the President and Vice-President of the United States, and holds that this power is in the electors to be exercised absolutely, without requisite response to the registered will of the voters. The decision holds, moreover, that any restraint on the unbridled discretion or caprice of the individual elector is forbidden by the Constitution of the United States.

This decision below, placing a novel judicial construction on Article II, Section 1, and the Twelfth Amendment of the United States Constitution, effects a profound change in the relationship of the voters of this country to the highest elective offices in the land. Every decision of the highest court of a state interpreting the Federal Constitution has repercussions that are nation-wide. This is especially true in the present case, since the decision of the Alabama court affects the election of the President and Vice-President of the United States and has as direct and as vital an effect on the voters of Oregon or Massachusetts as on the voters of Alabama. Obviously in the election of President and Vice-President, the electoral votes of one state are equally important to those interested in the election as are the same number of electoral votes from any other state. This Court should not permit the novel and sweeping decision below to stand. A state

court's holding of unconstitutionality, in order to have merit, should be based on some explicit command in the Constitution.

But neither the letter of the Constitution nor its history justifies or requires, in the case at bar, a decision upsetting these long-established state practices and stabbing at the heart of our political system as it has evolved over the years.

The fundamental fallacy in the opinion below is an assumption that there is a restriction of some sort in the Federal Constitution prohibiting any control of an elector's discretion. According to the Alabama Court, the "plain logic of the situation" and the "plain meaning of the Twelfth Amendment" required the Court to hold the state action unconstitutional. (R. 264) It is difficult to identify the "plain logic" and the "plain meaning" to which the Court below refers. Article II, Section 1, as originally adopted in 1787, provided merely that: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors . . . The Electors shall meet in their respective States, and vote by Ballot for two Persons . . ." The Twelfth Amendment provides: "The Electors shall meet in their respective states and vote by ballot for President and Vice-President . . ."

Perhaps the "plain meaning" and "plain logic" to which the Alabama Court refers is to be distilled from the said words "meet" and "vote". If this is what the Court had in mind, there is no apparent reason why an elector who is pledged to support the nominee of his party is thereby prevented from both meeting and voting.

But Article II, Section 1 and the Twelfth Amendment do not support the construction and application of the Alabama Court.

The key phrase in Article II, Section 1 is the phrase which specifies that in each state the electors are to be appointed "in such Manner as the Legislature thereof may direct." This clause is a grant of plenary power to the state legislatures to appoint electors. In *McPherson v.*

Blacker, 146 U. S. 1, 35, this Court said of Article II, Section 1:

> "(T)he practical construction of the clause has conceded plenary power to the State Legislatures in the matter of the appointment of Electors . . . In short, the appointment and mode of appointment of Electors belong exclusively to the States under the Constitution of the United States."

In the *McPherson* case, the issue before this Court was the constitutionality of a Michigan statute. This statute provided that the electors from Michigan should be selected, not from the state at large, but one from each Congressional district, plus one elector from the eastern half of the state, and plus a second elector from the western half of the state. This Michigan statute was challenged on the ground that it was unconstitutional for the state to deny to each and every voter in the state the opportunity of voting for each and every elector.

Just as in the case at bar, this Court in *McPherson* v. *Blacker* was not called upon to decide whether the action of the state legislature was a good thing or a bad thing. The question for decision in this Court was then, and is now, simply whether the state action exceeded any constitutional limitation. As this Court remarked under the closely related circumstances of the *McPherson* case:

> "We repeat that the main question arising for consideration is one of power and not of policy, and we are unable to arrive at any other conclusion than that the act of the Legislature of Michigan of May 1, 1891, is not void or in contravention of the Constitution of the United States for want of power in its enactment." 146 U. S. 1, 41-42.

The Court is concerned in the present case, as in the *McPherson* case, with the dimensions of a state's power to determine the manner in which Presidential electors are selected. In this respect the *McPherson* case is not wholly identical with the present case in that *McPherson* presented the question of the constitutionality of a state statute, whereas in the present case, the issue presented involves both the

constitutionality of a statute, and the constitutionality of administrative action taken pursuant to that statute.[3]

This Court in *McPherson* discussed the intent of the framers with respect to Article II, Section 1, and demonstrated that there was a "contrariety of views" among the various delegates to the Constitutional Convention. This Court there said:

> "The Journal of the Convention discloses that propositions that the President should be elected by 'the citizens of the United States,' or by the 'people,' or 'by electors to be chosen by the people of the several states,' instead of by the Congress, were voted down . . . as was the proposition that the President should be 'chosen by electors appointed for that purpose by the legislatures of the states,' though at one time adopted. Gerry proposed that the choice should be made by the state executives; Hamilton, that the election be by electors chosen by electors chosen by the people; James Wilson and Gouverneur Morris were strongly in favor of popular vote; Ellsworth and Luther Martin preferred the choice by electors elected by the legislatures; and Roger Sherman, appointment by Congress. The final result seems to have reconciled contrariety of views *by leaving it to the state legislatures* to appoint directly by joint ballot or concurrent separate action, or through popular election by districts or by

[3] In *Smith* v. *Allwright*, 321 U.S. 649, this Court considered and discussed the question of whether or not action by a political party pursuant to state statute constituted state action. In that case, the Court said: "(S)tate delegation to a party of the power to fix the qualifications of primary elections is delegation of a state function that may make the party's action the action of the state." (p. 660). Further:

> "Primary elections are conducted by the party under state statutory authority . . . We think that this statutory system for the election of party nominees for inclusion on the general election ballot makes the party which is required to follow these legislative directions an agency of the state insofar as it determines the participants in a primary election." (p. 663)

The state election statutes of Alabama, like the Texas election statutes which were before this Court in *Smith* v. *Allwright*, vest the State Executive Committee of the Party with authority over the party primary.

In *Schnell* v. *Davis*, 336 U. S. 933 (1949), this Court affirmed *per curiam* a decision of a three-Judge District Court in which the status of the Alabama Democratic Executive Committee was extensively discussed. The District Court said: "The State Democratic Executive Committee is an official arm of the State and its action constitutes state action. *Smith* v. *Allwright*, *supra*." *Davis* v. *Schnell*, 81 F. Supp. 872, 878 (S. D. Ala. 1949).

general ticket, or as otherwise might be directed." (Emphasis supplied) 146 U. S. 1, 28.

In other words, in the *McPherson* case the Court conceded that the debates at the Constitutional Convention did not make the issue clear beyond all possible doubt, because of the conflicting viewpoints of the various persons who attended the Convention.

As this Court indicated in *McPherson*, the final draft of the Constitution represented a compromise of conflicting views on the method of electing a President. The outstanding fact emerging from any historical analysis of these sections, as this Court recognized in *McPherson*, is that the framers intended that the individual states should prescribe the method of appointing electors. Indeed, the constitutional silence on the matter of free choice by electors may well have been purposeful and essential since some of the leading framers strongly advocated a direct election of the President.[4]

Even more explicit than the *McPherson* language was the statement of this Court in *In re Green*, 134 U. S. 377, 379: "The sole function of the presidential electors is to cast, certify and transmit the vote of the State for President and Vice President of the nation." To the same effect, see Justice Story:

> "... (N)othing is left to the electors after their choice but to register votes which are already pledged; and an exercise of an independent judgment would be treated as a political usurpation, dishonourable to the individual, and a fraud upon his constituents." (2 Story, *Constitution*, 5th Ed., p. 312.)

Complementing Justice Story's observation, this Court said in *McPherson*:

> "Doubtless it was supposed that the electors would exercise a reasonable independence and fair judgment

[4] Because of this Court's extremely detailed and comprehensive review of the history of Article II, Section 1, as set forth in *McPherson* v. *Blacker*, no further review of such history in this brief would seem to be required.

in the selection of the Chief Executive, but experience soon demonstrated that, whether chosen by the legislatures or by popular suffrage on general ticket or in districts, they were so chosen simply to register the will of the appointing power in respect of a particular candidate. In relation, then, to the independence of the electors the original expectation may be said to have been frustrated . . . the Constitution has been found in the march of time sufficiently comprehensive to be applicable to conditions not within the minds of its framers, and not arising in their time . . ." 146 U. S. 1, 36.

In view of the unanimous decision of this Court in the *McPherson* case, it would appear that any original intention on the part of some of the framers of the Constitution that electors *should* exercise their own independent judgment has long since been dissipated in practice. On the other hand, it is not necessary for Petitioner to prove, nor does he seek to prove, that the framers of the Constitution intended to *deny* freedom of choice to Presidential electors. Rather, the question here is whether a state may constitutionally do what Alabama and the other states have done throughout the history of the United States.

As far as the history of the Constitutional Convention of 1787 is concerned, it is entirely possible that some of the framers of the Constitution intended that the Presidential electors should have freedom of choice, if the Legislature of a given state should see fit to give such freedom of choice to the electors from that particular state. However, as was so clearly pointed out by this Court in *McPherson*, even though this may have been the intention of some of the framers of the Constitution, the actual application and construction of the Constitutional provisions on this particular point have been subject, over the years, both to judicial interpretation and to the emergence and growth of the two party system. The result, as pointed out by this Court in *McPherson*, is that "the practical construction of the clause [Article II, Section 1] has conceded plenary

power to the state legislatures." 146 U. S. 1, 35. Also, the Court expressly based its decision in *McPherson* on the fact that "the Constitution has been found in the march of time sufficiently comprehensive to be applicable to conditions not within the minds of its framers and not arising in their time . . ." (p. 36) The outstanding "condition" which arose in this country, very shortly after 1787, was the emergence and growth of political parties. Speaking to this subject in their work entitled "Growth of the American Republic", Morison and Commager said:

> "Political parties have made the nominations since 1792, and the presidential electors merely register the will of the state pluralities. That they should do so is now an unwritten convention quite as strong as any provision of the written constitution; and although some state legislatures appointed presidential electors as late as 1860, a popular vote has become the accepted and universal method. It is interesting to note that in this one department where the Federal Convention was largely without experience, it created a clumsy system which had to be supplemented by the Twelfth Amendment and by the intervention of political parties." 1 Morison and Commager, *Growth of the American Republic*, p. 291.[5]

As is evident from the material set out above and in Appendix "D", it is no new system that the Court below has struck down. It is a system which has grown up in this country over a period of more than 150 years—a system founded on the express constitutional provision that each State shall appoint its electors "in such manner as the Legislature thereof may direct." And it is a system which became, at an early stage in our history, as political parties emerged and grew, an essential element in the development of a truly representative democracy.

[5] For a collection of historical material relating to the role of Presidential electors and the growth of political parties, see Appendix "D" hereto.

This, then, is the system which the Court below through its revolutionary decision, would strike down. It is incumbent upon Respondent, who has attacked the constitutionality of the Alabama statute and the administrative action taken thereunder, to establish that the system in effect throughout the 48 States is in violation of the Constitution. And as this Court pointed out in *Day-Brite Lighting, Inc.* v. *Missouri*, 342 U. S. —, 96 Law. Ed. (Adv.) 343, 345, March 3, 1952, the constitutionality of state action shall be upheld "so long as specific constitutional prohibitions are not violated and so long as conflicts with valid and controlling federal laws are avoided." In the *Day-Brite* case, this Court considered a Missouri statute, dealing with the subject of elections. The Court upheld the constitutionality of the statute, against an attack based on a claim of unconstitutionality, on the strength of the judicial principle that state action carries a presumption of validity.

The historical development of the electoral system outlined above has been reflected in legislation in many states. Statutes in California and Oregon require electors to vote for their party's Presidential and Vice Presidential nominees.

The California Election Code, Section 10555, provides:

> "The electors, when convened, if both candidates are alive, shall vote by ballot for that person for President and that person for Vice-President of the United States, who are, respectively, the candidates of the political party which they represent . . ."

The Oregon Code, Section 81-503(a) provides:

> "Said candidates (for presidential electors) shall pledge themselves, if elected, to vote for their party's nominee for President and Vice-President of the United States in the electoral college."

The legislatures of twenty-one states have refused to tolerate the fiction of electoral discretion, and have provided that the names of the electors shall not appear on the

ballots at all. (See Appendix "C.") The Supreme Court of Ohio in *State ex rel Hawke* v. *Myers*, 132 O. St. 18, 4 N. E. 2d 397 (1936), upheld the constitutionality of an Ohio act placing only Presidential and Vice Presidential candidates on the ballot. Similar provisions for New York voting machines were sustained in *Thomas* v. *Cohen, et al.*, 146 Misc. 835, 262 N. Y. S. 320 (1933), the Court stating that mandamus would probably lie to force an elector to vote for his party's nominee for President and Vice-President. (262 N. Y. S. 326).

A recent study of our system for electing Presidents has described the situation which prevails nationally:

> "In 27 States candidates for Presidential electors are nominated by party conventions, in 7 by party primaries, and in 11 by party committees. The laws of Arkansas and North Carolina permit nominations either by party convention or primary. Pennsylvania has a unique and very realistic system in that the law provides that the presidential candidate of each party shall nominate the presidential electoral candidates for his party. The electors nominated in these various ways are, in elections, expected, and in some States required by law, to vote for their party's candidate. Three States, Caliornia, Oregon, and Massachusetts, go far as to bind their electors by law."[6]

Neither the letter of the Constitution nor its history justifies or requires a decision uprooting these long-established state practices.

Even in the absence of statutory mandate, courts of various states have required, in effect, that electors vote for their party's nominee.

The decision below is in direct conflict with the decision of the highest court of Nebraska in *State ex rel. Nebraska Republican Committee* v. *Wait*, 92 Neb. 313, 138 N.W. 159 (1912). That court affirmed an order to the Nebraska Secretary of State to remove from the Republican column

[6] Johnsen, "Direct Election of the President" (1949), p. 17.

on the ballot electors pledged to Roosevelt, and to replace them with electors pledged to Taft.

The decision below also conflicts with the decision of the highest court of Texas in *Seay* v. *Latham*, 143 Tex. 1, 182 S.W. 2d. 251 (1944).

It is little short of fraudulent for electors to run under the Democratic column, and then be able to vote in the electoral college for nominees of other parties. There are other practical reasons why electors should be required to vote for the national party nominee. The decision below would permit Presidential electors to vote in the Electoral College in complete disregard of the poitical party under whose auspices they run. As a result, the average voter, who ordinarily votes for the Presidential nominee of a given party, would lose the means of making his vote effective. If the candidates for elector of that party refused, as here, to pledge party loyalty, the voter would be effectively disfranchised. Even if no pledge were required, the voter would have no assurance, under the decision below, that his vote would have the result he intends. The great majority of voters know only the Presidential nominee for whom they wish to vote. They know little and care less as to who are the various candidates for electors, and undoubtedly *assume* that a vote for electors under a given party banner means a vote for the Presidential nominee of that party. The decision below, in holding unconstitutional the effort of the party to articulate this assumption in the form of a pledge of party loyalty, has struck not only at the pledge but at the basis of the silent assumption itself. This time-honored assumption would of course be forever undermined if candidates for elector could claim a constitutional right to disregard party ties—as held by the Alabama courts.

In other words, because of years of custom, the people have considered the merits of only the candidates for President and Vice-President. Usually, most of the voters know nothing of the persons who are candidates for electors. And they have ignored the electoral candidates for a good reason:

> "They (the electors) have no duties to perform which involve the exercise of judgment in the slightest degree . . . Their sole function is to perform a service which has come to be nothing more than clerical—to cast, certify, and transmit a vote already determined . . . They are in effect no more than messengers whose sole duty is to certify and transmit the election returns."
> *Spreckles* v. *Graham*, 194 Cal. 516, 531, 228 P. 1040, 1045 (1924).

See also: *Hodge* v. *Bryan*, 149 Ky. 110, 148 S.W. 21 (1912). The reasoning of these two cases is designed to show that electoral duties are so perfunctory that the electors should be nominated by convention even though nominations for state and public offices generally are made by primary election.[7]

Turning now from the broad public policy implications of the decision below, a brief discussion of the dissenting opinion below would seem to be appropriate. That opinion advanced the theory that, even granting that a duly elected Presidential elector might have freedom of choice under the Constitution, it did not follow that this freedom of choice extended to a prospective candidate who wished to reach the electoral college by running in the primary of a given political party.

The dissenting Justices said:

> "The Petitioner [Respondent here] is not a presidential elector. He is merely asserting a right to be-

[7] The following annotation at 43 L.R.A. (N.S.) 284, is pertinent:
"Irrespective of whether any power can legally compel the elector to vote the will of either his national party or his state party, it is obvious that a state may enact such election laws as will practically prevent the election of any man not morally bound to vote for the nominees of his party's national convention, or in the same way it might secure the election of men who are obliged to vote the will of the state party."

And further (p. 287):

"The purpose of such legislation is briefly stated in 26 Harvard Law Review, p. 353: 'But the whole purpose of conferring the right to use the party name on the ballot is to enable voters, without personal knowledge of the individual nominee, to vote for men supporting the party principles. If the representation of the ballot is deceptive, the law is more than nullified. There is certainly no injustice to the nominee in depriving him of his right when he is making an unconscionable use of it to defraud the voters.'"

> come a candidate in the Democratic Primary and his act in filing his application for candidacy is purely of his own volition . . . He is seeking to become a candidate in a Democratic primary without complying with the resolution duly adopted by the State Democratic Executive Committee. He is not an elector chosen by the State of Alabama and is not within the ambit of the Twelfth Amendment to the Constitution of the United States. . . .
>
> "Conceding that the Federal Constitution does safeguard to a presidential elector the right of free and independent choice in the electoral college, we are unable to see that this principle would inhibit a political party from fixing the qualifications of a candidate desiring to run in a party primary election. It would give such a candidate no right to become an elector via any particular political party route unless he meets the qualifications prescribed by the party. Though such a candidate, after having been elected as an elector in the general election, might have the right to cast his free ballot in the electoral college, Amendment Twelve of the Constitution guarantees him no right to go to the college by any certain primary election route." (R. 171, 172)

In this connection, it is worthy of note that the Alabama Democratic Executive Committee could have selected its candidates for elector according to the sole criterion of whether or not these candidates would pledge support to the Presidential and Vice-Presidential nominees of the Democratic National Convention, without submitting the matter to the voters at a primary election. Title 17, Alabama Code, Section 336. See e.g., *Seay* v. *Latham*, 143 Tex. 1, 182 S.W. 2d 251, 1944.[8]

[8] In *Seay* v. *Lathan, supra*, the May Texas Democratic Convention selected 23 electors who were absolved from obligation to support the nominees of the Democratic National Convention. Their names were certified to the Secretary of State. The National Convention nominated Roosevelt and Truman. Fifteen of the May nominees announced that they would not vote for Roosevelt and Truman in the electoral college. Thereupon the State party held a September convention, withdrew the nomination of the "May fifteen" and nominated fifteen substitutes, who would support the nominees of the National Convention. Mandamus issued to the Secretary of State to compel him to replace the previously certified "May nominees" with the "September nominees."

The Texas court stated the matter was clearly one "within the inherent power of the Party." (182 S.W. 2d 255.) Further: "The power to determine

Since the Alabama Democratic Executive Committee could have constitutionally selected candidates for elector in this manner,[9] pursuant to Alabama law, there should be no taint of unconstitutionality in the more democratic solution which the Committee adopted, in leaving the matter to the voters at the primary election—subject only to the limitation that candidates desiring to run for Presidential elector in the Democratic primary should pledge their willingness to support the Presidential and Vice Presidential nominees selected by the National Convention of the Democratic Party.

CONCLUSION.

For the reasons stated in this brief and in the Petition for Certiorari previously filed herein, it is respectfully submitted that the judgment of the court below should be reversed and rendered.

JAMES J. MAYFIELD,
HAROLD M. COOK,
GEORGE A. LEMAISTRE,
J. GORDON MADISON,
MARX LEVA,
LOUIS F. OBERDORFER,
TRUMAN M. HOBBS,
Attorneys for Petitioner.

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the policies of the Party, including the power to determine who shall represent it in the selection of the President and Vice-President of the United States, when not otherwise provided by statute or by rule of the association, resides in the State Convention of the Party." (182 S.W. 2d 253.) And again: "A presidential elector is selected by the Party as its nominee primarily to effectuate its policies and register its will in respect to a particular candidate. *McPherson* v. *Blacker*, . . ."

[9] See *McPherson* v. *Blacker*, 146 U.S. 1 (1892); *Seay* v. *Latham*, 143 Tex. 1, 182 S.W. 2d 251 (1944). Cf. Johnsen, "Direct Election of the President" (1949), p. 17:

> "In 27 states candidates for Presidential electors are nominated by party conventions, in 7 by party primaries, and in 11 by party committees."

And see *Walker* v. *United States*, 93 F. (2d) 383, 388 (C.C.A. 8, 1937), cert. den., 303 U.S. 643 (1938):

> "The Federal Constitution does not provide that the selection of electors shall be by popular vote . . . It leaves it to the state legislature to define the method of effecting the object. *McPherson* v. *Blacker*, 146 U.S. 1."

APPENDIX "A."

RELEVANT ALABAMA ELECTION STATUTES APPEARING IN ALABAMA CODE, 1940, TITLE 17:

Sec. 1. Primary elections included in general law.—All the provisions of this article shall apply to all primary elections and all elections by counties or municipalities held in this state, except in cases where the provisions hereof are inconsistent or in conflict with the provisions of a law governing special primary, county or municipal elections.

Sec. 75. Presidential electors and congressmen; when elected.—Electors for president and vice-president of the United States shall be elected on the first Tuesday after the first Monday in November, 1940, and every fourth year thereafter; a member of congress from each congressional district shall be elected on the first Tuesday after the first Monday in November, 1940, and every second year thereafter.

Sec. 138. Ballots; how printed.—The ballots printed in accordance with the provisions of this chapter shall contain the names of all candidates nominated by caucus, convention, mass meeting, primary election, or other assembly of any political party or faction, or by petition of electors and certified as provided in Section 145 of this title, but the name of no person shall be printed upon the ballots who may, not less than twenty days before the election, notify the judge of probate in writing, acknowledged before an officer authorized by law to take acknowledgments, that he will not accept the nomination specified in the certificate of nomination or petition of electors. The name of each candidate shall appear but one time on said ballot, and under only one emblem.

Sec. 145. Names of candidates placed on ballots; certificate of nomination.—The probate judge of each county shall cause to be printed on the ballots to be used in their respective counties, the names of all the candidates who have been put in nomination by any caucus, convention, mass meeting, primary election, or other assembly of any political party or faction in this State, and certified in writing and filed with him not less than sixty days previous to the day of election. The certificate must contain the name of each person nominated and the office for which

he is nominated, and must be signed by the presiding officer and secretary of such caucus, convention, mass meeting, or other assembly, or by the chairman and secretary of the canvassing board of such primary election.

In case of a person to be voted for by the electors of the whole state or of an entire congressional district, judicial circuit, or senatorial district for any state or federal office, the certificate of nomination must be filed in the office of the secretary of state not less than sixty days before the day of election; and the secretary of state must thereupon immediately certify to the judge of probate of each county in the state, in case of an officer to be voted for by the electors of the whole state, and the judges of probate of the counties composing the circuit or district, in case of an officer to be voted for by the electors of a circuit or district, upon suitable blanks to be prepared by him for that purpose, the fact of such nomination and the name of the nominee or nominees and the office to which he or they may be nominated.

The judge of probate shall also cause to be printed upon the ballots, the name of any qualified elector who has been requested to be a candidate for any county or municipal office by written petition signed by at least twenty-five electors qualified to vote in the election to fill said office, when such petition has been filed with him before the first Tuesday in May in the year in which a state-wide primary election is held.

The secretary of state shall also certify to the judge of probate of the several counties, as the case may be, the name of any qualified elector who has been requested to be a candidate for any state or federal office by written petition signed by at least three hundred electors qualified to vote in the election to fill said office provided such petition is filed with the secretary of state before the first Tuesday in May in the year in which a state-wide primary election is held. The judge of probate shall cause to be printed upon the ballots, the name, or names, of such qualified elector or electors, as the case may be.

Provided, however, that the judge of probate of the several counties in this state are hereby prohibited from causing to be printed on the ballot to be used in their respective counties, the name of any independent candidate for any state, county, or federal office who has not filed his declaration to become such a candidate before the first

Tuesday in May in the year in which a state-wide primary election is held. (As amended)

Sec. 148. Ballots; how printed.—The ballots printed in accordance with the provisions of this chapter shall contain the names of all candidates nominated by caucus, convention, mass meeting, primary election, or other assembly of any political party or faction, or by petition of electors and certified as provided in Section 145 of this title, but the name of no person shall be printed upon the ballots who may, not less than twenty days before the election, notify the judge of probate in writing, acknowledged before an officer authorized by law to take acknowledgments, that he will not accept the nomination specified in the certificate of nomination or petition of electors. The name of each candidate shall appear but one time on said ballot, and under only one emblem.

Sec. 155. Ballots for independent candidates.—The electors may write in the column under the title of the office the name of any person whose name is not printed upon the ballot for whom he may desire to vote. In case of nomination by independent ballots, the ballot shall be so arranged that at the right of the last column for party nomination the several tickets of the names of the independent candidates shall be printed in one or more columns according to the space required, having above each of the tickets the political or other names selected to designate such independent nominations. The ballot herein provided shall be substantially in the following form, viz:

. . . . .

Sec. 236. Day for holding special elections.—All special elections shall be held on such day as the governor may direct.

Sec. 237. Presidential electors and representatives in congress to be elected.—On the day prescribed by this title there are to be elected, by general ticket, a number of electors for president and vice-president of the United States equal to the number of senators and representatives in congress to which this state is entitled at the time of such election; and there shall be elected one representative in congress for each congressional district.

Sec. 238. Electoral meeting; oil supply of vacancies.—The electors of president and vice-president are to

assemble at the office of the secretary of state, at the seat of government at twelve o'clock noon on the second Tuesday in December next after their election, or at that hour on such other day as may be fixed by congress, to elect such president and vice-president, and those of them present at that hour must at once proceed by ballot and plurality of votes to supply the places of those who fail to attend on that day and hour.

Sec. 336. Election by party as to whether it will come within primary law.—A primary election, within the meaning of this chapter, is an election held by the qualified voters, who are members of any political party, for the purpose of nominating a candidate or candidates for public or party office. Primary elections are not compulsory. A political party may, by its state executive committee, elect whether it will come under the primary election law. All political parties are presumed to have accepted and come under the provisions of the primary election law, but any political party may signify its election not to accept and come under the primary election law by filing with the secretary of state, at least sixty days before the date herein fixed for the holding of any general primary election, a statement of the action of its state executive committee, certified by its chairman and secretary, which statement shall contain a copy of the resolution or motion adopted declining to accept and come under the primary election law. If a political party declines to accept and come under the primary election law it shall not change its action and accept and come under the primary election law until after the next general election held thereafter. The state executive committee of a political party may determine from time to time what party officers shall be elected in the primary; provided, candidates for all party offices shall be elected under the provisions of this chapter unless the method of their election is otherwise directed by the state executive committee of the party holding the election.

Sec. 337. Elections within primary law.—All primary elections hereafter held by any political party in this state for the nomination of any state, national, district, circuit, county or municipal officers, shall be held and conducted under the provisions of this chapter, and, except as herein modified, shall be held and conducted in the same manner and form, and under the same requirements, and subject to

the same forfeitures, penalties and punishments, as are now or shall hereafter be provided by law for the holding of regular state elections, but nothing herein contained shall make it obligatory upon any political party or parties to hold a primary election.

Sec. 340. Date of elections.—If any primary elections are held at the expense of the state or counties, except special primary elections, they shall be held on the first Tuesday in May, 1940, and on the first Tuesday in May every two years thereafter, and, when necessary, as hereinafter provided, a second primary shall be held in the fourth Tuesday next thereafter following said primary election. The second primary election shall be held by the same election officers, who held the first primary election, and be held at the same places the first primary election was held. No primary shall be held by any political parties for the nomination of candidates except as herein provided. Primary elections herein provided for shall be held at the regular polling places established for the purpose of holding general elections.

Sec. 341. Committees.—There may be provided a committee of each party for the state and each political subdivision of the state, including counties and municipalities, said committees to be selected in such manner as may be provided for by the governing authority of each party, but if there shall not be elected or chosen any committee for any county or municipality, then all the powers which could be exercised by any such committee shall be vested in the state executive committee, under such rules and regulations as the governing authority of the party may designate; provided, however, that should no committee be elected or chosen from any municipality in the state, then the executive committee of the county in which said municipality is located shall exercise the powers and perform the duties of the executive committee of such municipality. The state executive committee may provide for the selection of any such committee.

Sec. 344. Certification of names of candidates by chairman.—The chairman of the state executive committee of each party entering a primary election shall, not less than forty days prior to the date of holding the election, certify to the secretary of state the names of all candidates for nomination to federal, state, circuit, and district offices, the

state senate and house of representatives, and all other candidates, except candidates for county offices. The chairman of the county executive committee of each party entering the primary election shall, not less than forty days prior to the date of holding the election, certify to the probate judge the names of all candidates for nomination to county offices. The secretary of state shall, not less than thirty days prior to the date of holding the primary election, certify to the probate judge of every county in which the election is to be held the names of the candidates for nomination to federal, state, circuit, and district offices, the state senate and house of representatives, and all other candidates, except candidates for county offices. The probate judge of each county shall have the ballots prepared for the primary election. If a legally qualified candidate for nomination to an office is unopposed when the last date for certifying candidates has passed, his name shall not be printed on the ballots to be used in the primary election, and he shall be the nominee of the party with which he has qualified for the office. The probate judge shall have the ballots so printed that the names of the opposing candidates for any office to be voted for by the voters of more than one county shall, as far as practicable, alternate in position upon the ballots so that the name of each candidate shall occupy, with reference to the name of every other candidate for the same office, first position, second position, and every other position, if any, upon an equal number of ballots. When printed, the ballots shall be distributed impartially and without discrimination by the probate judge. (as amended)

Sec. 345. Candidate must be legally qualified to hold office.—The name of no candidate shall be printed upon any official ballot used at any primary election unless such person is legally qualified to hold the office for which he is a candidate, and unless he is eligible to vote in the primary election in which he seeks to be a candidate and possesses the political qualifications prescribed by the governing body of his political party.

Sec. 347. Who may vote in primary.—All persons who are qualified electors under the general laws of the State of Alabama, and who are also members of a political party entitled to participate in such primary election, shall be entitled to vote therein and shall receive the official primary

ballot of that political party, and no other; but every state executive committee of a party shall have the right, power and authority to fix and prescribe the political or other qualifications of its own members, and shall, in its own way, declare and determine who shall be entitled and qualified to vote in such primary election, or to be candidates therein, or to otherwise participate in such political parties and primaries; and the qualifications of electors entitled to vote in such primary election shall not necessarily be the same as the qualifications for electors entitled to become candidates therein; provided, that nothing herein contained shall be so construed as to prohibit any state executive committee of a party from fixing assessments or such other qualifications, as it may deem necessary, for persons desiring to become candidates for nomination to offices at a primary election, but such assessments shall not exceed two per cent of one year's emolument from all sources, of the office sought, and for an unremunerative or party county office it shall not exceed five dollars, or twenty-five dollars for an unremunerative or party office to be filled by the vote of a subdivision greater than one county, or one hundred dollars for an unremunerative or party office filled by the vote of the whole state.

Sec. 348. Filing declaration of candidacy.—Any person desiring to submit his name to the voters in a primary election shall, not later than March first, next preceeding the holding of such primary election, file his declaration of candidacy in the form prescribed by the governing body of the party with the chairman of the county executive committee if he be a candidate for a county office, and with the chairman of the state executive committee, if he be a candidate for any office except a county office, and in like manner, and not later than March first, next preceding the holding of such primary election, pay any assessments that may be required to be paid by him. (as amended)

Sec. 351. Official ballots and election stationery.—Separate official ballots and other election stationery and supplies for each political party shall be printed and furnished for use at each election district or precinct, and shall be of a different color for each of the political parties participating in such primary election. All ballots for the same political party shall be alike, except as herein otherwise provided, printed in plain type, and upon paper so

thick that the printing cannot be distinguished from the back. Across the top of the ballot shall be printed the words, "Official Primary Election Ballot." Beneath this heading shall be printed the year in which said election is held and the words "Democratic Party" or "Republican Party" or other proper party designation. Each group of candidates to be voted on shall be preceded by the designation of the office for which the candidates seek nomination, and in the proper place shall be printed the words, "Vote for one", or "Vote for two", (or more) according to the number to be elected to such office at the ensuing election. At the bottom of the ballot and after the name of the last candidate shall be printed the following, viz.: "By casting this ballot I do pledge myself to abide by the result of this primary election and to aid and support all the nominees thereof in the ensuing general election." Should any voter scratch out, deface or in any way mutilate or change the pledge printed on the ballot, he shall not be considered or held to have repudiated or to have refused to take the pledge, but shall, conclusively, be presumed and held to have scratched out, defaced, or mutilated or changed same for the sole purpose of identifying his ballot; and accordingly such ballot shall be marked "Spoiled Ballot" and shall not be counted.

Sec. 354. Lists of voters and necessary election supplies to be furnished by judge of probate.—The judge of probate of each county is hereby required to furnish to the officers of said primary election a copy of the official list of voters of each district or precinct in his county, of the same kind and in the same manner as he is by law required to furnish such list to the officers at any general state election, and he shall furnish as many of said lists as there are parties participating in said primary. The probate judge shall also furnish all necessary election supplies, including stamped addressed envelopes in which to mail certificate of results and other papers herein required to be forwarded. The probate judge shall deliver such election supplies and lists to the sheriff of the county not less than three days before the day of the election, and it shall be the duty of the sheriff to deliver the same, together with ballot boxes to the officers of said election, at the place provided by law for holding said election, and not later than seven-thirty o'clock a.m. on said election day.

Sec. 374. Contests of nomination; by whom instituted; grounds.—The contests of nomination by a party for office other than a county office, may be instituted by any qualified elector of the state, or of the political subdivision as the case may be, who belongs to that party and who legally participated in such primary election, upon the following grounds, which may be used separately, or else be joined in the same contest, namely: 1. Malconduct, fraud, or corruption on the part of any inspector, clerk, marker, returning officer, board of supervision or canvasser, or other persons. 2. When a person whose nomination is contested was not eligible to the office sought at the time of the declaration of nomination. 3. On account of illegal votes given. 4. On account of the rejection of legal votes. 5. Offers to bribe, bribery, intimidation, or other malconduct or misconduct calculated to prevent a fair, free and full exercise of the elective franchise. 6. Miscalculation, mistake or misconduct in counting, tallying, certifying or canvassing which of itself alone or in conjunction with the giving of illegal votes or the rejection of legal votes, or any other ground would, when everything is corrected, reduce the number of legal votes cast for the declared nominee down to or below those of some other candidate in that race.

Section 384. Elector who has participated may contest election; procedure.—Any qualified elector of a party, participating in any primary election held under the provisions of this chapter may if he participated in the primary, contest a nomination declared by his party to any office, other than a county office, by filing with the chairman of the state executive committee his statement of contest and grounds thereof as required by this chapter, for contest before a committee, verified and with averments the same as therein provided, and by giving security as elsewhere provided in this chapter. The person whose nomination is contested shall at once be notified by such chairman, in writing, of such fact and such contestee shall have ten days after the receipt of such notice of such contest within which to file with the chairman of the state executive committee his objections and answers to the statement of contest.

Sec. 386. Meeting of state executive committee in case of contest.—The state executive committee shall, upon the filing of a contest with the chairman, be called by such chairman, to meet at a time not less than ten days nor more than twenty days from the time of filing such contest, for

the purpose of hearing and determining the same, or, without calling the committee to meet, the chairman may appoint a sub-committee as herein provided for.

Sec. 388. New primary in case contest cannot be decided.—If, upon the hearing of any contest for any office, as provided for in this chapter, the committee, after an investigation and hearing of the contest, shall determine that it is impossible from the evidence before it to decide who is the legally nominated candidate for the office contested, it shall have the right and authority to direct a new primary election for the nomination to any such office, but where any action is taken by any county executive committee, either person to the contest, in the same manner as herein provided for in the case of appeals from the action of any county committee, may take an appeal to the state executive committee, which shall be the court of final appeal in all party contests of nominations; provided, that upon hearing of any contest or appeal, as provided for in this chapter, which is not referred to and decided by a sub-committee fifteen members of any such state executive committee shall constitute a quorum for the hearing and determining of such contest, or appeal, provided further, that the entire committee be notified of the meeting in the usual way.

Sec. 389. Power of state committee to provide rules of party procedure.—The state executive committee may prescribe such other additional rules governing contests and other matters of party procedure as it may deem necessary, not in conflict with the provisions of this chapter.

APPENDIX "B."

Item One: Resolution of Jan. 26, 1952.

The following Resolution was adopted by the State Democratic Executive Committee of Alabama at its meeting in Montgomery, Alabama, on Saturday, January 26th, 1952:

Montgomery, Alabama
January 26, 1952

BE IT RESOLVED BY THE STATE DEMOCRATIC EXECUTIVE COMMITTEE OF ALABAMA AS FOLLOWS:

1. That under the authority, and subject to the terms and provisions of, the Primary Election Law of Alabama as contained in Sections 336 to 424, both inclusive, of Title 17 of the Code of Alabama of 1940, and the amendments thereto, a Democratic Primary Election is hereby ordered to be held throughout the State of Alabama on Tuesday, May 6th, 1952, and, if necessary, as provided by said law, a second Democratic Primary Election is hereby ordered to be held throughout the State of Alabama on Tuesday, June 3rd, 1952.

2. That said Primary Election shall be held and conducted in all respects in accordance with the Primary Election Law of Alabama as hereinabove referred to.

3. (A) That in said Primary Elections there shall be nominated candidates for all Federal, State, District, Circuit, County and Precinct offices to be filled in the General Election to be held in November, 1952; and there shall be nominated in said Primary Elections eleven Electors for President and Vice-President of the United States from and by the State at Large and eleven Alternate Electors from and by the State at Large.

(B) That there shall be elected in said Primaries a Democratic National Committeeman and a Democratic National Committeewoman from the State of Alabama; and in said Primary Elections there shall also be elected twenty-six Delegates and twenty-six Alternate Delegates to the Democratic National Convention which shall be held in 1952, eight of said Delegates and eight of said Alternate Delegates to be elected from and by the State at Large, and two of said Delegates and two of said Alternate Delegates to be

elected from and by each of the nine Congressional Districts in this State. Of the eight Alternate Delegates elected from the State at Large the one receiving the highest number of votes in said Primary Election shall be designated as Alternate Delegate from the State at Large No. 1, the one receiving the next highest vote therein as Alternate Delegate from the State at Large No. 2, the one receiving the next highest vote therein as Alternate Delegate from the State at Large No. 3, the one receiving the next highest vote therein as Alternate Delegate from the State at Large No. 4, the one receiving the next highest vote therein as Alternate Delegate from the State at Large No. 5, the one receiving the next highest vote therein as Alternate Delegate from the State at Large No. 6, the one receiving the next highest vote therein as Alternate Delegate from the State at Large No. 7, and the one receiving the next highest vote therein as Alternate Delegate from the State at Large No. 8, and in the same order such Alternates shall fill vacancies as the same may occur in the delegation from the State at Large. Also, as to the two Alternates elected from each Congressional District as herein provided, the one receiving the highest number of votes in said Primary Election shall be designated District Alternate Delegate No. 1 from said District and the one receiving the next highest vote therein shall be designated as District Alternate Delegate No. 2 from said District, and shall in the same order fill vacancies as the same may occur in the delegation from the respective Districts. Should there be any vacancy from any cause in the Alabama Delegation in the Democratic National Convention of 1952, and an Alternate Delegate is not present to fill such vacancy, then the remaining members of the Alabama Delegation to said Democratic National Convention shall by majority vote fill any and all such vacancies on the said Alabama Delegation.

4. That the following persons shall be entitled to vote in said Primary Elections, and none others, namely: Qualified electors in this State who believe in the principles of the Democratic Party, and who agree and bind themselves by participating in said Primary, to abide by the result of said Primary Elections and to aid and support the nominees of the Democratic Party therein and also the nominees of the National Convention of the Democratic Party for President and Vice-President of the United States, and that there shall be printed in plainly visible type at the bottom of each

ballot prepared for said Primary Elections, and on the face of each voting machine used therein the following, to wit:

"By casting this ballot I do pledge myself to abide by the result of this Primary Election and to aid and support all the nominees thereof in the ensuing General Elections. I do further pledge myself to aid and support the nominees of the National Convention of the Democratic Party for President and Vice-President of the United States."

5. That the following persons, and none others, shall be eligible to be candidates for nomination or election in said Primary Elections, namely: Qualified electors who possess the qualifications fixed by law for the respective offices for which they are candidates for nomination or election; provided, however, that no person shall become a candidate for any Federal, State, District, Circuit, County, Precinct or Party Office, or have his or her name printed upon the Democratic ballot in said Primary Elections, if such person voted a Republican ticket or any independent ticket, or the ticket of any party or group other than the Democratic Party, or for anyone other than the nominees of the Democratic Party, or any ticket other than the Democratic ticket in the General Election held in November, 1950, or openly and publicly opposed the election of the nominees of the Democratic Party, or any of them, in the General Election held in November, 1950; and provided further that each such proposed candidate shall have filed with the Chairman of the State or County Democratic Executive Committee as provided in Paragraph 6 of this Resolution a declaration of candidacy signed and sworn to by such proposed candidate containing a pledge to aid and support all of the Democratic nominees in said elections and also the nominees of the National Convention of the Democratic Party for President and Vice-President of the United States, and provided further that no person shall become a candidate for the Democratic nomination for Judge of a Court of Record who is under disbarment or suspension at the time he seeks to qualify for such office. Each such proposed candidate shall also be required to pay, as hereinafter provided, the assessment, or entrance fee, fixed, or levied, by this Committee, or fixed or levied by his County Democratic Executive Committee, if he be a candidate for nomination for a

County Office, ON OR BEFORE the first day of March, 1952.

6. That candidates for nomination or for election for all of said offices shall, ON OR BEFORE March 1, 1952, file with the Chairman of the State Democratic Executive Committee in all offices except County offices, and for County offices, with the Chairman of the respective County Democratic Executive Committees, a declaration of candidacy as follows:

"I hereby declare myself to be a candidate for the Democratic nomination (or election) in the primary elections to be held on Tuesday, the 6th of May, 1952, and on Tuesday, the 3rd of June, 1952, for the office of ..... I hereby certify that I did not vote, in the general election held in November, 1950, a Republican ticket or any independent ticket, or the ticket of any party or group, other than the Democratic Party, or for any one other than the nominees of the Democratic Party, or any ticket other than the Democratic ticket, or openly and publicly in said general election oppose the election of the nominees of the Democratic Party, or any of them. I further agree to abide by the result of the primary elections in which I am a candidate and I do pledge myself to aid and support all the nominees in said Primary Elections, and also the nominees of the National Convention of the Democratic Party for President and Vice-President of the United States. I further certify that I am a qualified elector of the State of Alabama and possess the qualifications fixed by law for the office for which I am a candidate, and if a candidate for the Democratic nomination for Judge of a Court of Record, I do further certify that at the time of filing this declaration of candidacy, I am not under disbarment or suspension.

Sworn to and subscribed before
me on this the ..... day of ....., 1952.

.....

Notary Public .... County, Alabama."

7. That in accordance with Section 346 of Title 17 of the Code of Alabama of 1940, hereinabove referred to, this Committee, desiring to enter the Primary Elections ordered to be held under the provisions of said Primary Law, shall give public notice thereof by filing, in accordance with said Section of our Code, a copy of this Resolution with the Secretary of State of Alabama, and the Chairman of this Committee is authorized and directed to prepare, execute and file said copy.

8. That the following entrance or qualifying assessment against each candidate for nomination, or election, in such Primary Elections, except as to County offices, be, and the same hereby are, fixed, or levied, by this Committee.

(1) Against each candidate for nomination for any remunerative office, other than a County office, two per cent of the emolument of such office for one year, from every lawful source (not including allowance to Circuit Judges and Circuit Solicitors for expenses and allowances to Congressmen and United States Senators for expenses), except that in the case of candidates for Circuit Judge for the unexpired term of their predecessor, the entrance or qualifying assessment shall be $35.00;

(2) Against each candidate for Elector for President and Vice-President of the United States, and against each Alternate candidate for Elector, $10.00;

(3) Against each candidate for Democratic National Committeeman, $50.00;

(4) Against each candidate for Democratic National Committeewoman, $50.00;

(5) Against each candidate for Delegate to the Democratic National Convention from the State at Large, $50.00, and against each candidate for Alternate Delegate to the Democratic National Convention from the State at Large, $25.00;

(6) Against each candidate for Delegate to the Democratic National Convention from a Congressional District, $10.00, and against each candidate for Alternate Delegate to the Democratic National Convention from a Congressional District, $5.00.

9. That no candidate for nomination for any office or for election to any party office other than a County office, who fails to pay the assessment required to be paid by him ON OR BEFORE March 1st, 1952, or who fails to file his affidavit in the form herein prescribed ON OR BEFORE the 1st day of March, 1952, to and with the Chairman of the State Democratic Executive Committee, shall have his name printed on the (illegible), nor shall votes for such candidate so failing to qualify be counted.

10. That, within the limits provided by law, the authority of this Committee to fix entrance or qualifying fees or assessments of candidates for Democratic nomination for County office, is hereby vested in the several Democratic County Executive Committees of this State, insofar as the 1952 Democratic Primary Elections are concerned.

11. That no candidate for nomination for a County office who fails to pay the assessment required to be paid by him ON OR BEFORE March 1st, 1952, or who fails to file his affidavit in the form herein prescribed ON OR BEFORE the 1st day of March, 1952, to and with the Chairman of the County Democratic Executive Committee, shall have his name printed on the ticket, nor shall votes for such candidate so failing to qualify be counted.

12. That the Chairman of this Committee be, and he hereby is authorized, empowered, and directed, to appoint a Sub-Committee of five, consisting of the Chairman of this Committee, who will be the Chairman of the Sub-Committee, and four members of this Committee, and such Sub-Committee shall have all the powers of this Committee to supervise the holding of the Primary Elections herein ordered, including the canvassing and tabulating of the vote and the declaration of result and the certification of those nominated, and so elected, and the said Sub-Committee shall perform all the duties required by law of this Committee in said Primary Elections, except the duties required by law on the Chairman.

13. That no County Democratic Executive Committee of any County of this State shall pass any resolutions or take any action in the premises in conflict herewith.

14. That a copy of this resolution be sent by the Chairman of this Committee to the Chairman of each County

Democratic Executive Committee of the State for their guidance and compliance.

15. That if, in the opinion of the Chairman of this Committee, it becomes necessary or advisable for any further action to be taken in connection with such Primaries or the results pertaining thereto, the Chairman of this Committee is hereby fully authorized and empowered to act for and on behalf of the Committee.

16. If any sentence, clause, term, provision, or part of this resolution should be held invalid or ineffective by any Court or officer such holding shall not invalidate or affect the remainder of this resolution.

State of Alabama
Secretary's Office

I, Rea F. Ray, Chairman of the State Democratic Executive Committee of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the resolution adopted by the State Democratic Executive Committee of Alabama, at its meeting held in Montgomery, Alabama, on January 26th, 1962, and I do further certify that this certified copy of the said resolution is filed in the Public Records Archives of State of Alabama, in all respects as provided by Section 346 of Title 17 of the Code of Alabama of 1940.

Given under my hand and the seal of the said State Democratic Executive Committee of Alabama, at Birmingham, Alabama, on this the 26th day of January, 1962.

Rea F. Ray,
Chairman of the State Democratic
Executive Committee of Alabama.

Rule Four. Rules of the Democratic Party of Alabama.

The following rules are published and established by the State Democratic Executive Committee of Alabama.

1. This Committee shall be known as the State Democratic Executive Committee of Alabama and may be called the State Committee.

2. This Committee shall be composed of seven members, eight from each congressional district, chosen by the county units by the votes in force at the time of the last

tion. The member receiving the highest vote in his district shall be the member for the State at large from that district. Should there be a tie-vote for the highest place and/or should all the members receive the same vote, then the Committee shall elect one member therefrom as a member from the state at large. Each must be a qualified elector, and shall have and retain his citizenship and right to vote in the district from which he is chosen, and should he lose his citizenship by permanently removing from said district, then this shall constitute a vacancy in such membership. Vacancy in membership from any cause will be filled for the unexpired term by the State committee at the next meeting following the vacancy. The term of membership begins on the first Monday after the second Tuesday in January next after the election and is for four years from the time of their installation in office and until their successors are elected and qualified.

3. The state committee shall meet at such time and place as the committee may determine, or a majority thereof, or upon the call of the chairman.

4. The State Democratic Executive Committee of Alabama shall review, on appeal, the decision of the county committees in all cases concerning the nomination of county officers and all matters relating to rules and policies. The State committee has supervisory power over county committees and is authorized of its own motion to set aside any action of a county committee which it may deem proper.

5. The officers of this committee are: (a) Chairman; (b) Vice-Chairman; (c) Secretary; (d) Treasurer; and a Chairman pro tem. may be chosen for a full meeting or any part thereof. A Secretary pro tem. may be appointed by the Chairman as occasion may require. The Treasurer shall be appointed by the Chairman and the Treasurer and Secretary need not be members. The offices of Secretary and Treasurer, when deemed advisable, may be filled by the same person, but the Treasurer may be a banking institution. The Secretary and Treasurer shall at all times be under the direction of the Chairman, and shall report and serve as required by him, and all appointees of the Chairman hold at his pleasure.

The Chairman is authorized to appoint a stenographer or reporter to take the minutes of the meetings; also, any other agents or assistants as may be necessary.

The Chairman of this committee is authorized and empowered to reject declarations of candidacy, with or without a trial before the committee, notwithstanding the affidavit, if he believes the affidavit to be untrue, with a right of appeal on the part of the candidate to the Executive Committee for review.

6. Unless otherwise provided for in these rules, the rules as to parliamentary procedure governing the House of Representatives of this State shall be of force and govern in all meetings of this committee or any sub-committee or committees thereof.

7. The order of business shall be as follows: 1. Assembly and roll-call. 2. Minutes, unless dispensed with. 3. New business, in the call or otherwise. 4. Unfinished business, old or new. 5. Vacancies in membership filled. 6. Adjournment.

The order of business may be changed at any time by the Chairman, in absence of objection.

The State Chairman votes, and if a tie occurs the proposition is lost.

In emergencies the Chairman, at his discretion, may take a vote of the membership by mail or referendum on any matter, except as otherwise provided by law or the rules of this Committee, he fixing the time to vote, but a vote so taken shall not be opened or cast at a meeting.

Proxies are never allowed.

Suspension of rules may be had by two-thirds concurring vote of those voting, provided at least a quorum votes, but shall not be had by referendum or mail.

Order of procedure of motions and the like shall be as follows: 1. Adjourn. 2. Adjourn to fix time. 3. Referring to Committees. 4. Postpone indefinitely. 5. Previous question. 6. Lay on the table. 7. Postpone to fixed time. 8. Amend.

8. At all meetings of the Committee, a majority vote shall prevail except upon motion to change or suspend the rules established for the government of this committee.

9. Seventeen members, or such number of members as may be required by law of the committee shall constitute a quorum.

10. There shall be an executive committee, composed of one member from each Congressional district, to be appointed by the Chairman of the State Committee, subject to the approval of the committee. It shall be their duty to execute and carry out the plans of the State Committee as the same shall, from time to time, be laid down by that committee, under whose authority it shall act. The Chairman of this committee shall be an ex-officio member and Chairman of the said executive committee. Five members shall constitute a quorum.

11. A finance committee of not over seven members, consisting of the State Chairman and not less than two nor more than six others, any three of whom may act by majority, may be named, changed, discharged, wholly or in part, from time to time, as deemed best, by the Chairman, for the purpose and with the power of aiding him in auditing and determining, and allowing or rejecting claims and in expending funds, or in other financial matters, as desired by him from time to time, and to be known by such name as he may desire.

12. The State Committee, except as otherwise provided by law has sovereign, original, appellate, and supervisory power and jurisdiction of all party matters throughout the state, and each county thereof. It is empowered and authorized to prescribe and enforce rules, regulations, and penalties against the violation of party fealty including removing or debarring from party office or party privilege anyone within its jurisdiction, including a member of this committee, who violates such fealty or its rules, or its other lawful mandate.

13. Only those candidates who have qualified as required by law and who have also complied with the rules and regulations fixed by this committee shall be voted for in any primary election. It shall not be permissible to write or stamp in any name not officially printed on the primary ballot in any primary election, except the names of beat committeemen may be so written or stamped.

14. The chairman of this committee is hereby authorized and empowered to create any special or sub-committee as may be desired.

15. The term of office of members of the county committee shall begin on the first Monday after the Second Tuesday in January next after their election, and shall continue for four years, and until their successors are elected and qualified.

16. Funds of the Committee shall be kept on deposit in bank in the Committee's name, or the name of the sub-committee, as the case may be. The State Chairman may place funds to the bank credit of the sub-committee from time to time as convenience may suggest. Funds shall be disbursed by bank draft or check drawn by the Treasurer and countersigned by the Chairman, or, when more convenient, drawn by the Chairman, of either, against funds to its credit.

Assessment payments by candidates shall be required as per statutes, and if statutes should not expressly permit, then only by way of request.

Assessments are fixed by the State Committee, or its sub-committee duly authorized, as to all offices filled by the vote of territory greater than a single county, and by county executive committees as to all offices filled by the vote of a single county or less territory, except congressmen from a district of only one county as to which the State Committee shall fix the assessment.

Obligations of this Committee or its sub-committee, may be paid by the State Chairman or sub-chairman, as the case may be, out of committee funds, without waiting for a meeting of the State Committee.

17. Sub-committees may incur the reasonable and necessary expenses of carrying out their purposes and shall report the receipts, disbursements, and expenses. The actual and necessary expense of a member of a sub-committee incurred by him for traveling within the State, or in the necessary discharge of his duty as such committeemen, may be paid out of the State Committee's general funds, but shall not be taxed as any part of the costs of a contest or appeal on contest.

The State Chairman's expenses whether for postage, stationery, long or short distance telephone or telegraph mes-

sages, freight, express, parcel post, railroad or other transportation, office help, or other expense incurred in attending meetings of any of the sub-committees of the State Committee as requisite, or otherwise incurred in the discharge of the duties of his office except attending meetings of the State Committee, shall be paid or reimbursed from the Committee's general funds.

Accounts of officers, sub-committees, agents, should be audited from time to time, especially at the ends of campaigns, and the Chairman may appoint a committee therefor at any time of not over three members, in his discretion.

18. State office includes any that is state-wide or filled by the vote of the whole State, and any office of which the whole or greater part of the emolument is paid by the State. State Executive Committeeman is a party officer.

A district, circuit, or division office is one filled by the vote of a district, division, or circuit.

And a county office includes any other office than the above stated, that may be filled by the vote of a single county or less territory.

19. (A) Whenever a special election is called to fill a State office, or the office of representative in congress, except the offices of State Senator and Representative, the State Committee may in its discretion, nominate a candidate of the party therefor, or provide for a nomination by primary election, or convention, or other method in vogue in the Party at the time. Where there is ample time for using the customary method primary, or convention, etc., then that should be used. But the Committee determines as to the emergency or circumstances.

(B) When the special election is for the office of State Senator in a district embracing more than one county the State Chairman in conjunction with the members of the State Committee residing in the territory affected, or a majority of them, present at a meeting called by the State Chairman, for that purpose may nominate a candidate of the party therefor.

(C) When the special election is for any county office, or for representative, or state senator in a district of only one county, the county executive committee may act, in the same way, and with like power and duty, regarding such office, as first above provided for the State Committee.

(D) Certificates of nomination shall be promptly made by the same presiding officer or other officers as in cases of nominations at primary elections or conventions.

(E) When a nomination has been made and becomes vacant before the election, the vacancy may be filled by use of any of the above stated plans, for making nominations for special elections that may be applicable or adaptable to use, in the judgment of the State Chairman who shall advise or direct action as occasion may suggest or require.

But a vacant nomination for a circuit judgeship filled by the vote of a single county shall be filled by the State Committee under subdivision (A) above.

The nomination filled shall be certified as requisite for the original nomination.

20. These rules may be amended, altered, or repealed, after written notice, showing what change is proposed, furnished the members of the committee ten days before any regular or called meeting of the State Committee. If the change be proposed at a meeting, it shall lie over at least twelve hours.

Such amendment or alteration, or repeal shall be adopted or carried by a vote of a majority of the members voting, if a quorum votes, and if taken on referendum or by mail, it shall require a concurring majority of all members of the State Committee to effect the change or amendment.

21. The State Committee may make any rules or regulations for the purpose of enforcing these rules not inconsistent therewith.

APPENDIX "C"

RELEVANT STATUTES IN THOSE STATES WHICH PROVIDE THAT THE NAMES OF CANDIDATES FOR PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES SHALL APPEAR ON GENERAL ELECTION BALLOTS IN LIEU OF THE NAMES OF CANDIDATES FOR PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTORS.

California

Deering's California Code, Elections:

§ 3003. Presidential Candidates and Electors. Whenever a group of candidates for presidential electors equal in number to the number of presidential electors to which this State is entitled filed a nomination paper with the Secretary of State pursuant to this chapter, the nomination paper may contain the name of the candidate for President of the United States and the name of the candidate for Vice President of the United States for whom all of those candidates for presidential electors pledge themselves to vote.

§ 10555. Convening and Voting for President and Vice-President: Party Vote. The electors, when convened, if both candidates are alive, shall vote by ballot for that person for President and that person for Vice President of the United States, who are, respectively, the candidates of the political party which they represent, one of whom, at least, is not an inhabitant of this State.

Colorado

1935 Colorado Statutes Annotated, Chapter 59:

§ 197. (As amended) Form of ballot.—Every ballot, intended for the use of voters, shall contain the names of all candidates for offices to be balloted for at that election, whose nominations have been duly made and accepted as herein provided, and who have not died or withdrawn, and shall contain no other names of persons except that when presidential electors are to be elected, their names shall not be printed upon the ballot, but in lieu thereof, the names of the candidates of their respective parties or political groups for president and vice-president of the United States shall be printed together in pairs under the title "presidential

electors." Such pairs shall be arranged in alphabetical order of the names of the candidates for president in the manner provided for in section 198 of this chapter. A vote for any such pair of candidates shall be a vote for the electors of the party or political group by which such candidates were named and whose names have been filed with the secretary of state. . . .

CONNECTICUT

Connecticut General Statutes (1949 Revision):

§ 1043. Vote for presidential electors. When an election is to be held for the choice of electors of president and vice-president of the United States, if any political party shall have nominated candidates for president and vice-president of the United States, and electors to vote for such presidential and vice-presidential candidates shall have been nominated by a political convention of such party in this state, or in such other manner as shall entitle the names of such electors to be placed upon the ballots or voting machines to be used in such election, it shall be lawful for the secretary and for every other official charged with the preparation of ballots or voting machines to be used in such election, in lieu of placing the names of such electors of president or vice-president on such ballot or voting machine, to place on such ballots or voting machines a space with the words "Presidential electors for (here insert the last name of the candidate for president, the word 'and' and the last name of the candidate for vice-president)"; and a vote cast by making a crossmark to the left of such space, or by registering a vote in such space in the manner required by the voting machine, shall be counted, and shall be in all respects effective, as a vote for each of the presidential electors representing such candidates for president and vice-president.

DELAWARE

Laws of Delaware 1943, Chapter 119, page 403:

Section 1. . . . There shall be two separate ballots, to-wit: a Presidential and Vice-Presidential Ballot and a State, County and District Ballot. The Clerks of the Peace for the several Counties shall cause to be printed on the Presidential and Vice-Presidential Ballot, herein provided for,

the names of the candidates nominated for President and Vice-President by the parties recognized by them as political parties within the meaning of this Chapter, as shall be certified to them by the Secretary of State; . . .

On the sample ballot set out in Section 3 of the above Act appears the following statement:

"A vote for the candidates for President and Vice-President shall be a vote for the electors of such party, the names of whom are on file with the Secretary of State."

ILLINOIS

Illinois Revised Statutes 1951, Chapter 46:

§ 21-1. . . . (b) The names of the candidates of the several political parties or groups for electors of President and Vice-President shall not be printed on the official ballot to be voted in the election to be held on the day in this Act above named. In lieu of the names of the candidates for such electors of President and Vice-President, immediately under the appellation of party name of a party or group in the column of its candidates on the official ballot, to be voted at said election first above named in section 2-1, there shall be printed within a bracket the name of the candidate for President and the name of the candidate for Vice-President of such party or group with a square to the left of such bracket. Each voter in this State from the several lists or sets of electors so chosen and selected by the said respective political parties or groups, may choose and elect one of such lists or sets of electors by placing a cross in the square to the left of the bracket aforesaid of one of such parties or groups. Placing a cross within the square before the bracket enclosing the names of President and Vice-President shall not be deemed and taken as a direct vote for such candidates for President and Vice-President, or either of them, but shall only be deemed and taken to be a vote for the entire list or set of electors chosen by that political party or group so certified to the Secretary of State as herein provided. Voting by means of placing a cross in the appropriate place preceding the appellation or title of the particular political party or group, shall not be deemed or taken as a direct vote for the candidates for President and Vice-President, or either of them, but instead to the Presidential vote, as a vote for the entire list or set of electors chosen by that political party or group so certified to the Secretary of State as herein provided.. . . .

INDIANA

Burns Indiana Statutes Annotated:

§ 29-3902. Names on ballots—Form.—The names of the candidates for electors of president and vice-president of the United States, of any political party or group of petitioners, shall not be placed on the ballot, but in arranging and preparing the ballots for the election at which presidential electors are to be elected, the names of the candidates for president and vice-president of the United States, respectively, of such political parties or groups of petitioners, shall be placed in one (1) column on the ballot, where ballots are used, and on one (1) ballot label, in one (1) column or row, where voting machines are used in the same form and manner as the names are set out in section 120 (§ 29-3903), under the title and device of such political party or group of petitioners, nominating a group of candidates for presidential electors. Wherever the names of the candidates for president and vice-president of the United States, respectively, are so printed, there shall be printed above their respective names the words: "For presidential electors for."

§ 29-3904. Votes cast for president and vice-president construed as votes for electors—Counting, canvassing and certifying of votes.—Every vote cast or registered for the candidates for president and vice-president of any one political party or group of petitioners shall be conclusively deemed to be a vote cast or registered for all of the candidates of such political party or group of petitioners for the presidential electors of such party or groups of petitioners, and shall be counted as such. The votes cast or registered for the candidates for president and vice-president of any political party or group of petitioners shall be counted, canvassed and certified in the same manner, and subject to the same penalties and liabilities, as the votes for other candidates.

IOWA

Code of Iowa 1950:

Ch 49, § 49.32 Candidates for president in place of electors. The candidates for electors of president and vice-president of any political party or group of petitioners shall not be placed on the ballot, but in the years in which

they are to be elected the names of candidates for president and vice-president, respectively, of such parties or group of petitioners shall be placed on the ballots, as the names of candidates for United States senators are placed thereon, under their respective party, petition, or adopted titles for each political party, or group of petitioners, nominating a set of candidates for electors.

Ch 54, § 54.2 How elected. A vote for the candidates of any political party, or group of petitioners, for president and vice-president of the United States, shall be conclusively deemed to be a vote for each candidate nominated in each district and in the state at large by said party, or group of petitioners, for presidential electors and shall be so counted and recorded for such electors.

KENTUCKY

Kentucky Revised Statutes 1948:

§ 118.070 Persons entitled to have name placed on ballot for regular election. (1) . . . the county clerk of each county shall cause to be printed on the ballots for the regular election the names of the following persons: . . .

(f) Candidates for President and Vice President of the United States, of those political parties and organizations who have nominated presidential electors as provided in KRS 118.090, where the certificate of nomination of such electors has been filed with the Secretary of State within the time prescribed in KRS 118.130.

§ 118.170 Form of ballot; party emblems; method of indicating public questions. . . .

(6) The names of candidates of the several political parties and organizations for electors of President and Vice President of the United States shall not be printed on the ballot, but in lieu thereof, immediately under the party name or device of each party in the column of its candidates on the official ballot, there shall be printed within a bracket the name of the candidate for President and the name of the candidate for Vice President of such party, with a square to the right of the bracket. The placing of a cross within the square to the right of the bracket enclosing the names of candidates for President and Vice President, or in the circle at the head of the column of such party, shall not be

deemed and taken as a direct vote for such candidates for President and Vice President, but shall only be deemed and taken to be a vote for the entire list or set of electors chosen by that political party as provided in KRS 118.090.

MARYLAND

Annotated Code of Maryland, Article 33:

§99. The form and arrangement of the ballots shall be as follows: All ballots shall contain the name of every candidate whose nomination for any office specified in the ballot has been certified to and filed according to the provisions of this Article, and not withdrawn in accordance therewith, except that the names of the candidates for the office of Electors of President and Vice-President of the United States shall not be printed on the ballot but in lieu thereof the names of the candidates of each political party for the office of President and Vice-President shall be printed thereon. . . . There shall be left at the right of the surnames of the candidates for President and Vice-President, so formed as to include both names, a sufficient clear square in which each voter may designate by a cross (X) his choice for electors, and a cross (X) placed by the voter in the square opposite the names of the candidates of a party for President and Vice-President shall be deemed and counted as a vote for each of the Presidential Electors of said party named in the certificate of nomination filed according to the provisions of this Article. . . .

§197. On the day fixed by law of the United States for choice of President and Vice-President of the United States there shall be elected by general tickets as many electors of President and Vice-President as this State shall be entitled to appoint: provided that the names of the candidates for the office of electors of President and Vice-President of the United States shall not be printed on the ballot but in lieu thereof the names of the candidates of each political party for the office of President and Vice-President shall be printed thereon; and a vote for said candidates for President and Vice-President shall be deemed and counted as a vote for each of the Presidential electors of said party named in the certificate of nomination of such Presidential candidates filed according to the provisions of this Article.

MASSACHUSETTS

Annotated Laws of Massachusetts, Chapter 54:

§43. Presidential Electors, Arrangement of Names of Candidates, etc.—The names of the candidates for presidentil electors shall not be printed on the ballot, but in lieu thereof the surnames of the candidates of each party for president and vice president shall be printed thereon in the line under the designation "Electors of president and vice president" and arranged in the alphabetical order of the surnames of the candidates for president, with the political designation of the party placed at the right of and in the same line with the surnames. A sufficient square in which each voter may designate by a cross (X) his choice for electors shall be left at the right of each political designation.

MICHIGAN

Compiled Laws of Michigan 1948:

§ 177.16. . . . At the general November election in the year in which electors of president and vice-president of the United States are elected, a separate ballot shall be printed, upon which shall be printed the names of the candidates for president and vice-president of the United States in the manner provided in section 20 of this chapter.

§ 190.4 Ballot; marking, effect of cross in circle.

Sec. 4. Marking a cross in the circle under the party name of a political party, at the general November election in a presidential year, shall not be deemed and taken as a direct vote for the candidates of the said political party for president and vice-president or either of them, but, as to the presidential vote, as a vote for the entire list or set of presidential electors chosen by that political party and certified to the secretary of state as in this chapter provided.

MISSOURI

Revised Statutes of Missouri 1949:

§ 111.420. Form of ballot—sample.—1. Every ballot printed under the provisions of this chapter shall contain the names of every candidate whose nomination for any office specified on the ballot has been certified or filed according to the provisions of this chapter, and no other names.

The names of all candidates to be voted for in each election district or precinct shall be printed on one ballot; all nominations of any political party or group of petitioners being placed under the party name designated by them in their certificates of nomination or petitions, and the ballot shall contain no other names, except that in place of the names of candidates for electors of president and vice-president of any political party or group of petitioners, there shall be printed within a bracket, immediately below the circle in the column of said party, with a square to the left of such bracket, the names of the candidates of each political party for president and vice-president. The names of the candidates of the several political parties for electors of president and vice-president shall not be printed on the ballot, but shall after nomination, be filed with the secretary of state.

2. A vote for any of such candidates for president and vice-president shall be a vote for the electors of the party by which such candidates were named and whose names have been filed with the secretary of state. The respective party state committees shall certify in writing the nominations of such presidential and vice-presidential candidates to the secretary of state at some time before the secretary of state is required by law to certify the candidates of the several political parties and groups of petitioners to the several clerks of the county court or to election commissioners. In presidential years an instruction shall be on the ballot as follows: "A vote for names of candidates for president and vice-president is a vote for the electors of that party, the names of whom are on file with the secretary of state."

NEBRASKA

Revised Statutes of Nebraska, 1943:

§32-219. Presidential electors; how chosen. In the year 1944 and every four years thereafter, at the general election held on such day as Congress may appoint, each presidential elector nominated by any party or group of petitioners shall receive the combined vote of the electors of the state for the candidates for President and Vice President of such party or group of petitioners, and a vote cast for the candidates for President of the United States shall be a vote for the electors of the respective party or group of petitioners.

§32-503. Ballots; form. . . . (3) if the election be in a year in which a President of the United States is to be elected, in spaces separated from the foregoing by a heavy black line and entitled "Presidential Ticket," in black type not less than eighteen point, shall be the names and spaces for voting for candidates for President and Vice President; the names of candidates for President and Vice President for each political party shall be grouped together, each group enclosed with brackets with one square to the left in which the voter indicates his choice, and the party name to the right according as near as possible to the following form or schedule:

JOHN DOE, President
( ) Republican
RICHARD ROE, Vice President

with a heavy line across the column, separating the group of the different political parties; no blank lines are to be left for writing in names for President and Vice President; . . .

NEW HAMPSHIRE

Public Laws of New Hampshire, 1943, page 13, approved February 9, 1943:

§ 1. Biennial Election Ballots. Amend section 3 of chapter 34 of the Revised Laws by striking out all of said section and inserting in place thereof the following new section: 3. Contents. Every ballot shall contain the name and residence of each candidate who has been nominated in accordance with law, except as hereinafter provided, and shall contain no other name except party appellations. The names and addresses of the presidential electors shall not be printed on the ballot, but in lieu thereof the names of a party's candidates for president and vice-president shall be printed thereon under the designation "Electors of president and vice-president of the United States." In case a nomination is made by nomination papers, the words, Nom. Papers, shall be added to the party appellation.

NEW JERSEY

Revised Statutes Cumulative Supplement of New Jersey, Title 19:

§ 19:14-11. Arrangement of nominees for electors of president and vice-president; directions to voters. The sur-

names of candidates for president and vice-president of the United States shall be printed in one line preceded by the words "presidential electors for." In the nomination by petition columns the surnames of candidates for president and vice-president shall be followed by the designation mentioned in the petitions filed. In the personal choice column the voter may write or paste the surnames of candidates for president and vice-president for whom he desires the electors to vote. To the left of the surnames of candidates for president and vice-president of the United States, shall be printed a square, one-half inch in size, accompanied by the following directions to the voter: "To vote for all the electors of president and vice-president mark a cross or plus within the square opposite the surname of president and vice-president."

§ 19:14-4. Head of the ballot; form and contents; instructions. . . .

7. To vote for all the electors of any party, mark a cross or plus in black ink or black pencil in the square at the left of the surnames of the candidates for president and vice-president for whom you desire to vote.

NORTH CAROLINA

General Statutes of North Carolina of 1943:

§163-108. Arrangement of names of presidential electors.—The names of candidates for electors of president and vice-president of any political party or group of petitioners, shall not be placed on the ballot, but shall after nomination be filed with the secretary of state. In place of their names there shall be printed first on the ballot the names of the candidates for president and vice-president, respectively, of each party or group of petitioners and they shall be arranged under the title of the office. A vote for such candidates shall be a vote for the electors of the party by which such candidates were named and whose names have been filed with the secretary of state.

NEW YORK

See p. 56, infra.

OREGON

See text of brief on the merits, p. 15.

PENNSYLVANIA

Purdon's Pennsylvania Statutes Annotated, Title 25:

§ 2878. Presidential electors; selection by nominees; certification; vacancies.

The nominee of each political party for the office of President of the United States shall, within thirty days after his nomination by the National convention of such party, nominate as many persons to be the candidates of his party for the office of presidential elector as the State is then entitled to. If for any reason the nominee of any political party for President of the United States fails or is unable to make the said nominations within the time herein provided, then the nominee for such party for the office of Vice-President of the United States shall, as soon as may be possible after the expiration of thirty days, make the nominations. The names of such nominees, with their residences and post-office addresses, shall be certified immediately to the Secretary of the Commonwealth by the nominee for the office of President or Vice-President, as the case may be, making the nominations. Vacancies existing after the date of nomination of presidential electors shall be filled by the nominee for the office of President or Vice-President making the original nomination. Nominations made to fill vacancies shall be certified to the Secretary of the Commonwealth in the manner herein provided for in the case of original nominations.

In the official ballot form prescribed by Section 2963 of Title 25, supra, the following instruction appears:

"To vote for a person whose name is not on the ballot, write or paste his name in the blank space provided for that purpose. A cross mark in the square opposite the names of the candidates of any party for President and Vice-President of the United States indicates a vote for all the candidates of that party for presidential elector. To vote for individual candidates for presidential elector, write or paste their names in the blank spaces provided for that purpose under the title 'Presidential Electors.'"

RHODE ISLAND

Public Laws of Rhode Island, 1939-1940, page 739, chapter 818, provides for the use of voting machines in general elections. Section 1 of this Act provides in part as follows:

"Sec. 3. Any type or make of voting-machine approved by the board of elections must meet the following requirements: . . .

"It may also be provided with one device for each party, for voting for all the presidential electors of that party by one operation, and a ballot therefor containing only the words 'Presidential electors for' preceded by the name of that party and followed by the names of the candidates thereof for the offices of president and vice president, and a registering device therefor which shall register the vote cast for said electors when thus voted collectively; *provided, however*, that means shall be furnished whereby the voter can cast a vote in part for the candidates for presidential electors of one party, and on part for those of one or more other parties or in part or in whole for persons not nominated by any party; . . .

WASHINGTON

Public Laws of Washington, 1935, page 45, chapter 20, approved February 23, 1935:

Section 1. In the years in which presidential elections are held each political party nominating candidates for president and vice-president of the United States and electors of the same shall file with the secretary of state certificates of nomination of such candidates at the time and in the manner and number provided by law. The secretary of state shall certify to the county auditors the names of the candidates for president and vice-president of the several political parties, which shall be printed on the ballot. The names of candidates for electors of president and vice-president shall not be printed upon the ballots. The votes cast for candidates for president and vice-president of each political party shall be counted for the candidates for presidential electors of such political party, whose names have been filed with the secretary of state.

WISCONSIN

Wisconsin Statutes 1949:

§ 6.23. . . . (9) In each year in which there is to be elected a president and vice-president of the United States, there shall be printed and provided for use in each precinct at the

general election a separate ballot, to be designed "Presidential Ballot," which shall be substantially in the form annexed, marked "C," except the party candidates shall be arranged from top to bottom according to rank in obtaining votes at the last preceding general election for governor, that is, the party receiving the largest vote will be placed first and the others in their corresponding position. The order of names of independent candidates for president and vice president shall be alphabetical according to the candidate for president, and such names shall follow the names of the party candidates for such offices.

(10) (a) At the top of each presidential ballot shall be placed in letters of not less than three-eighths of an inch in length the words "Official Presidential Ballot." Underneath the words "Official Presidential Ballot" and in plain, legible type shall appear the following instruction to voters: "Make a cross (X) or other mark in the square opposite the name of the candidates for whose electors you desire to vote. Vote in ONE square only.

NEW YORK

The New York Election Law, Section 248, prescribes the form of ballots to be used on voting machines. This section reads in part as follows:

"The party emblem for each political party represented on the machine, which has been duly adopted by such party in accordance with this chapter, and the party name or other designation, and a designating letter and number shall be affixed to the name of each candidate, or, in case of presidential electors, to the names of the candidates for president and vice-president of such party. . . ."

APPENDIX "D."

Historical Material on the Role of Presidential Electors.

1. Excerpts from Corwin, "The President—Office and Powers" (1948):

(a) "The power to determine the manner in which the Electors from any state shall be chosen is thus delegated to the legislature thereof for its exclusive determination, and the most diverse methods have been at various times resorted to. The history of practice in this matter is extensively reviewed in the Court's opinion in *McPherson* v. *Blacker*, decided in 1892. * * *

"In the first three presidential elections choice by the legislature itself was the usual method. In the election of 1824, when the choice fell eventually to the House, Electors were chosen by popular vote, either by districts or by general ticket in all but six states; and from 1832 till the Civil War they were chosen by popular vote and by *general ticket* in all states except South Carolina, where the legislature still chose. Since the Civil War there have been but two departures from the general ticket system. In 1876 in Colorado, which had been recently admitted into the Union, choice was by the legislature; and in 1892 Michigan, whose legislature was then in the hands of the Democrats, who however had no hope of retaining their hold on the state as an entirety in the approaching presidential election, choice was by districts, some of which went Democratic. There have also been cases in which individual Electors have, on account of personal popularity, been chosen by the minority party."

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"It was the belief of the Framers of the Constitution that the Electors would exercise their individual judgments

in the choice of a President, a belief which the universal understanding that Washington would be the first President, and probably for an indefinite number of terms, went to sustain. But the requirement that the Electors meet "in their respective states," which reflected the poor condition of travel in those days, destroyed the possibility of a deliberative body from the outset; and with the first avowed appearance of party organizations on a national scale, in consequence of Washington's announcement in 1796 that he would not stand for a third term, the Electors became promptly transmuted into party dummies, a character they have retained ever since."

Edward S. Corwin, "The President—Office and Powers" (1948), p. 50.

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(b) "A half century later occurred the disputed election of 1876, and James Russell Lowell, who had been chosen by the Republicans as an Elector from Massachusetts, was besought to save the country from threatened civil war by casting his vote for Tilden. Lowell refused on the ground that he had been elected not as an individual but solely as a party representative.

> "I was nominated [said he] and elected by my fellow-citizens of the Republican party to give effect to their political wishes as expressed at the polls, and not to express my own personal views. I am a delegate carrying a definite message, a trustee to carry out definite instructions; I am not a free agent to act upon my own volition; in accepting a place on the Republican ticket I accepted all its limitations and moral obligations. . . . My individual sympathies and preferences are beside the matter; to refuse to comply with the mandate I received when I accepted my party's nomination would be treacherous, dishonorable, and immoral."

"Indeed, it was a former President's considered opinion that 'an Elector who failed to vote for the nominee of his

party would be the object of execration, and in times of very high excitement might be the subject of a lynching.' Theoretically, to be sure, the Electors retain their *constitutional* discretion as against any outside *legal* control. But what a totally hollow sham that is, is shown by the fact that in many of the states nowadays the names of the party choices for Elector do not appear on the ballot at all, and the voters vote only for their party."

Edwin S. Corwin, "The President—Office and Powers" (1948), p. 51.

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2. Excerpt from Bryce, "The American Commonwealth" (1891):

"No part of their scheme seems to have been regarded by the constitution-makers of 1787 with more complacency than this, although no part had caused them so much perplexity. No part has so utterly belied their expectations. The presidential electors have become a mere cog-wheel in the machine; a mere contrivance for giving effect to the decision of the people. Their personal qualifications are a matter of indifference. They have no discretion, but are chosen under a pledge—a pledge of honour merely, but a pledge which has never (since 1796) been violated—to vote for a particular candidate. In choosing them the people virtually choose the President, and thus the very thing which the men of 1787 sought to prevent has happened,—the President is chosen by a popular vote. Let us see how this has come to pass. * * * The fourth election was a regular party struggle, carried on in obedience to party arrangements. Both Federalists and Republicans put the names of their candidates for President and Vice-President before the country, and round these names the battle raged. The notion of leaving any freedom or discretion to the electors had vanished, for it was felt than an issue so great must and could be decided by the nation alone. From that day till now there has never been any question of reviving the true and original intent of the plan of double election,

and consequently nothing has ever turned on the personality of the electors. They are now so little significant that to enable the voter to know for which set of electors his party desires him to vote, it is thought well to put the name of the presidential candidate whose interest they represent at the top of the voting ticket on which their own names are printed.

"The completeness and permanence of this change has been assured by the method which now prevails of choosing the electors. The Constitution leaves the method to each State, and in the earlier days many States entrusted the choice to their legislatures. But as democratic principles became developed, the practice of choosing the electors by direct popular vote, originally adopted by Virginia, Pennsylvania, and Maryland, spread by degrees through the other States, till by 1832 South Carolina was the only State which retained the method of appointment by the legislature. She dropped it in 1868, and popular election now rules everywhere. In some States the electors were for a time chosen by districts, like members of the House of Representatives. But the plan of choice by a single popular vote over the whole of the State found increasing favour, seeing that it was in the interest of the party for the time being dominant in the State. In 1828 Maryland was the only State which clung to district voting. She, too, adopted the 'general ticket' system in 1832, since which year it has been universal."

James Bryce, "The American Commonwealth (1891), Vol. I, p. 38.

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3. Excerpts from Stanwood, "A History of the Presidency from 1788 to 1897" (1912):

(a) "No argument is needed to prove that the scheme of the fathers is not only impracticable, but that in its operation it would now be intolerable. Were electors to be chosen merely as party men, uncommitted to any candidates, one

of two things must happen. Either the choice of these candidates, after the appointment of electors, would be made in the utmost confusion, and would be attended with scandalous intrigues, perhaps with corruption; or, the election of a President would be thrown into the House of Representatives, not occasionally, but always. The most casual consideration of the subject will convince every thinking man that the system we have is far better than that which the fathers planned. We have, in the convention system, a device which substitutes the judgment of a whole party for that of the individual elector, and which enables the wishes of the largest party to be carried into effect, instead of being scattered and wasted. The new system may not, does not, carry out the exact intention of the Fathers, but it conforms to the letter of the Constitution."

Edward Stanwood, "A History of the Presidency from 1788 to 1897" (1912) p. 11.

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(b) "[Referring to the Presidential election of 1796]. One vote for Jefferson in Pennsylvania deserves notice, since it is believed to have been given by the only elector in the history of the country who has ever betrayed the trust reposed in him by those who supported him. The closeness of the vote in Pennsylvania already has been recorded, and the fact that two Federalist electors slipped in. One of the two voted for Jefferson and Pinckney. The treachery of this elector was the subject of an exceedingly plain-spoken communication in the 'United States Gazette' from an exasperated Federalist. 'What!' he exclaimed. 'Do I chuse Samuel Miles to determine for me whether John Adams or Thomas Jefferson shall be President? No! I chuse him to *act*, not to *think*.' "

Edward Stanwood, "A History of the Presidency from 1788 to 1897" (1912), p. 50.

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4. Excerpts from Dougherty, "The Electoral System of the United States" (1906):

(a) "The electoral theory contemplated the emancipation of the electors from outside control: they were to be appointed in the several States independently. The idea of a general convention was discarded because of the subtle influence which might be employed to affect the action of an assembled body, and because of the difficulty in convening so large a gathering at the national capital. By the electoral plan the appointees of each State were to meet in that State and cast a secret ballot on the same day upon which the electors convened in all the other States, the intent being that each separate electoral college should, when making its choice, be unaware of the decision of the others. But in practical effect, the secret, independent, unpledged electors in a brief time became the absolute servants of party. Their action was early dominated by legislative and congressional caucuses, and when party conventions were developed, they became mere registers of the convention's will. Each elector thus became so completely an automaton that in ordinary circumstances he would not dream of exercising any freedom in the use of his ballot, for violation of his tacit pledge to the party that elected him would bring upon him all the odium attaching to a traitor."

J. Hampden Dougherty, "The Electoral System of the United States" (1906), p. 1.

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(b) "The growth of democracy quickly revolutionized the plans of the framers of the Constitution. The independence ~~which electors were to~~ exercise in choosing a candidate for the presidency ~~soon gave way to~~ a positive obligation upon their part to obey the dictates of party. No presidential elector would today cast his vote for any presidential candidate other than the one selected by the party whose representative he himself is. In 1796 three Democratic

electors, passing over the preference of their party, voted for John Adams for the presidency. Elbridge Gerry, one of the electors selected by the Democracy of Massachusetts, voted for Adams in place of Jefferson, but subsequently explained his action by letter to Jefferson, evidently to the latter's satisfaction. Had two of the three Democratic electors who voted against their party's candidate voted for him, Jefferson would have succeeded to the presidency in 1797, instead of 1801. No one at the time questioned the propriety of the action of these electors; whereas, today, the exercise of such freedom would be deemed a breach of trust. Since 1796 there has been no well-authenticated case of an elector's failure to carry out his party's expectations."[1]

J. Hampden Dougherty, "The Electoral System of the United States" (1906), p. 17.

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(c) "The electors were originally designed to be the agents of a State, armed with plenary authority to cast its vote for President and Vice-President in such manner as the agents themselves or a majority of them might will, all danger of abuse of the trust being intended to be averted by the selection of worthy and fitting instruments for the execution of this high office. The chief magistrate of the nation, according to the unsophisticated notions of our fathers, was to be the nominee of these electors. In the evolution of history, without a syllable of alteration in the text of the organic law, the nature of the agency of the

[1] "From the beginning," says Benton, "the electors have stood pledged to vote for the candidates indicated [in the early elections] by the public will; afterwards, by Congress caucuses, so long as these caucuses followed the public will; and since, by assemblages called conventions, whether they follow the public will or not. In every case the elector has been an instrument, bound to obey a particular impulsion; and disobedience to which would be attended with infamy, and with every penalty which public indignation could inflict. From the beginning these electors have been useless, and an inconvenient intervention between the people and the object of their choice, and in time may become dangerous. The institution should be abolished, and the election committed to the direct vote of the people!"

electors has been revolutionized; it has become a specialized agency never imagined by the framers of the Constitution. Electors are now the mere instruments of party, 'party puppets,' as Justice Bradley termed them, to perform a function which an automaton without intelligence or volition might as fittingly discharge. Ingalls hardly detracted from the dignity of their supposed office when he likened them to 'the marionettes in a Punch and Judy show.' "

J. Hampden Dougherty, "The Electoral System of the United States" (1906), p. 250.

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(d)"Whatever the origin of the electoral plan, its failure in purpose is clear. The idea of the elector as an over-lord is not consonant with democratic institutions, and our institutions while not democratic at the outset have become increasingly so. Nominally free in Washington's day, the electors never dreamed of resisting the sentiment that universally acclaimed the father of his country the first President of the new Union. In Adams' time there were one or two electors who asserted their constitutional prerogatives, but the majority obeyed the desires of party leaders, and since that period the search is vain for the theoretical elector of the Constitution. Party spirit has deposed him and made him its tool. That elector would render himself infamous who, accepting the office upon the only possible conditions upon which it would be conferred,—which tacitly bind him to obey his party's behests,—should employ it to defeat the will of those who placed him in it."

J. Hampden Dougherty, "The Electoral System of the United States" (1906), p. 252.

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5. Excerpts from Watson, "The Constitution of the United States" (1910):

(a) "One author[1] says: 'The legislature of the Commonwealth might order the election of the electors by universal suffrage or by a restricted suffrage, directly or indirectly, by district ticket or general ticket, by single or cumulative vote; or it might authorize the executive of the commonwealth to appoint them; or it might choose them itself; or cause them to be selected by any person and in any manner which it might deem suitable. It may, and it alone can, direct how a disputed election of the electors or any one of them shall be determined. It may, and it alone can, determine the qualifications of the electors, outside of the one qualification prescribed by the Constitution, viz., that they shall hold no office of trust or profit under the United States.'"

David K. Watson, "The Constitution of the United States" (1910), Vol. II, p. 1568.

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(b) "Of the decline of the Electoral College President [Theodore] Roosevelt says:

'As a matter of fact the functions of the electorate have now by time and custom become of little more importance than those of so many letter carriers. They deliver the electoral votes of their States just as a letter carrier delivers his mail.'"

Quoted in David K. Watson, "The Constitution of the United States" (1910), Vol. II, p. 1573, from Roosevelt, American Ideals, 150.

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[1] Burgess, Constitutional Law, vol. 2, 216.

6. Excerpts from Johnsen, "Direct Election of the President" (1949):

(a) "In twenty-seven states candidates for presidential electors are nominated by party conventions, in seven by party primaries, and in eleven by party committees. The laws of Arkansas and North Carolina permit nomination either by party convention or primary. Pennsylvania has a unique and very realistic system in that the law provides that the presidential candidate of each party shall nominate the presidential electoral candidates for his party. The electors nominated in these various ways are, if elected, expected, and in some states required by law, to vote for their party's candidate. Three states, California, Oregon, and Massachusetts, go so far as to so bind their electors by law."

Quoted in Julia E. Johnsen, "Direct Election of the President" (1949), p. 17, from testimony of Prof. Jacob Tanger in U. S. Senate Committee on the Judiciary Hearings on S. J. Res. 2, 81st Cong., 1st Sess., pp. 189-196.

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(b) "In Pennsylvania and twenty-three other states the names of candidates for elector do not appear on the ballot. Only the names of the presidential and vice-presidential candidates and their party appear in the presidential elector section in these short ballot states and, if it is not expressly stated on the ballot, it is understood that when the voter marks a choice for these two candidates he is voting for the group of electors of their party. The lists of the party's nominees for electors in these states are held in escrow, as it were, by the secretary of state or some other state official designated by law, from whom they may be readily obtained by the inquisitive voter. Few of the voters know who are the nominees for electors, and few more know who have been elected electors. But who cares? The voter is quite satisfied when he learns immediately after

the November election that this or that party candidate for President won.

In New York a dual system of electing electors operates. The names of electoral nominees do not appear on the voting machine but are printed on the hand-marked ballots. Fifteen states print the names of the electoral and presidential candidates on the ballot, and nine states print the electoral but not the presidential and vice-presidential candidates. Under either of these systems where the electors' names appear on the ballots, the voter who is not overawed by party loyalty can distribute his vote among several lists of electors, but the almost universal provision on the ballots for voting for an entire block of party candidates with one mark reduces the likelihood of having electors elected from more than one party. State laws and party customs have in brief come to consider party candidates for electors as a unit and, following the almost uniform pattern of state election laws that a plurality only and not necessarily a majority of votes is sufficient to elect, it results in the election of that party's group of electors, listed or not on the ballot, which receives the highest vote. Consequently some one party acquires all the electoral votes of a state. After the November election the electors remain practically as anonymous as before. They have as so many votes been tabulated unofficially by states, and nationally and for the general public the election is over. But under federal and supplementary state laws they are required to meet at their state capitals and cast their votes on the first Monday after the second Wednesday in December and forward their ballots to Washington to be officially counted and the result declared on the sixth of January following."

Quoted in Julia E. Johnsen, "Direct Election of the President" (1949), p. 19, from testimony of Prof. Jacob Tanger in U. S. Senate Committee on the Judiciary Hearings on S. J. Res. 2, 81st Cong., 1st Sess., pp. 189-196.

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(c) "There is considerable variation among the states in methods now used to nominate candidates for the office of presidential elector. In twenty-seven states, electors are nominated by the state conventions of the respective parties; the law in ten states gives this power to the various party organizations; and in seven states electors must be nominated in primaries. In Arkansas, Maryland, and North Carolina, they may be nominated by either the primary or the convention method; and in Pennsylvania the law provides that the presidential nominee of each political party shall nominate as many persons to be the candidates of his party for presidential electors as the total number of electors to which the state is entitled. In November 1944, the Mississippi legislature nominated a slate of electors whose names were printed on a supplemental ballot, and the voter had his choice between the electors nominated by the parties and those nominated by the legislature."

Quoted in Julia E. Johnsen, "Direct Election of the President" (1949), p. 88, from Ruth C. Silva, "State Law on the Nomination, Election, and Instruction of Presidential Electors," American Political Science Review (1948), 42: 523-9.

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(d) "Before 1832, several legislatures themselves selected the members of the state's electoral college, a practice followed by South Carolina until the Civil War. As every student of American government knows, in the period from 1788 to 1832, the popular selection of electors was established and real discretion on the part of electors in choosing a President and Vice President became a legal fiction. For a century, the practice has been for the electorate to choose

a set of electors, who, it is understood, will legally confirm the decision already made at the polls."

> Quoted in Julia E. Johnsen, "Direct Election of the President" (1949), p. 87, from Ruth C. Silva, "State Law on the Nomination, Election, and Instruction of Presidential Electors," American Political Science Review (1948), 42: 523-9.

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(e) [This is an excerpt from a Report of a Select Committee of the Senate made January 19, 1826.]

"It was the intention of the Constitution that these electors should be an independent body of men, chosen by the people from among themselves, on account of their superior discernment, virtue, and information; and that this select body should be left to make the selection according to their own will, without the slightest control from the body of the people. That this intention has failed of its object in every election, is a fact of such universal notoriety, that no one can dispute it . . . Electors, therefore, have not answered the design of their institution. They are not the independent body and superior characters which they were intended to be. They are not left to the exercise of their own judgment; on the contrary they give their vote, or bind themselves to give it, according to the will of their constituents. They have degenerated into mere agents, in a case which requires no agency, and where the agent is useless if he is faithful, and dangerous, if he is not. Instead of being chosen for their noble qualities set forth in the *Federalist*, candidates for electors are now most usually selected for their devotion to a party, their popular manners, and a supposed talent at electioneering, which the

framers of the Constitution would have been ashamed to possess."

> Quoted in Julia E. Johnsen, "Direct Election of the President" (1949), p. 56, from Lucius Wilmerding, Jr., "Reform of the Electoral System," Political Science Quarterly (1949), 64: 1-23.

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(f) "In recent years, twenty-one states, by adopting the so-called 'presidential short ballot,' have recognized the obligation of the electors to vote in the electoral college for the presidential nominee of their party. These states do not print the names of the candidates for elector on the general election ballot, but instead place the name of the party's nominee for President and for Vice President under the party appellation. A vote for the presidential candidate is considered a vote for the entire list of electors nominated by that party. In twelve other states, the name of the presidential candidate appears on the ballot along with the names of his party's nominee for the Electoral College. New York actually is the thirteenth state in this list, but the presidential short ballot is used where voting machines are authorized. The laws of eight states require the names of the electors to be placed on the ballot and say nothing about the name of the presidential nominee or allow his name to be added to those of the electors. Only five states, by listing the nominees for electors while omitting the names of candidates for President and Vice President, adhere to the fiction of the people's choosing electors, who in turn freely elect the President and Vice President. Contrary to newspaper reports, Virginia is not one of these states . . . Finally, in South Carolina, where the Australian ballot is not in use, each party provides its own general ticket ballot for presidential electors. The name of the candidate and the office he seeks must be printed on the ballot, and it is left to the party to decide whether or not

to put the names of the presidential and vice-presidential candidates on the ballot."

> Quoted in Julia E. Johnsen (1949) "Direct Election of the President, p. 89, from Ruth C. Silva, "State Law on the Nomination, Election, and Instruction of Presidential Electors," American Political Science Review (1948), 42: 523-9.

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7. Excerpts from Congressional materials:

(a) "*How the Electoral College System Operates.*

"As has been noted, all States now choose their electors by popular vote. Local and State party organizations prepare the slates of electors which are approved by party conventions or primaries. In 21 States the electors' names do not appear on the ballot, but in 4 States only the electors' names, and not those of the Presidential candidates, appear. Voters usually think of themselves as voting for the President and Vice-President when they go to the polls, but actually they vote only for the electors, even though they seldom know who the electors are."

> Library of Congress, Legislative Reference Service "Proposed Reform of the Electoral College, 1950," p. 3.

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(b) "By the Constitution it was intended that the electoral office should be one of the first dignity in the Republic. The electors were to be selected; men chosen by the people on account of their superior virtue and intelligence, and left to make choice of a President, according to their own enlightened understandings, without the slightest control from the less-informed multitude. This was the intention but the plan has wholly failed in the execution. The

electors are not independent; they have no superior intelligence; they are not left to their own judgment in the choice of President; they are not above the control of the people; on the contrary, every elector is pledged before he is chosen to give his vote according to the will of those who choose him. He is nothing but an agent, tied down to the execution of a precise trust."

Excerpt from speech of Hon. Thomas H. Benton of Missouri, in the U. S. Senate, February 3, 1824. U. S. Congress, House of Representatives, 44th Congress, 2nd Session, Miscellaneous Document No. 13, "Counting Electoral Votes," p. 728, Government Printing Office, 1877.

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